

MARINA HEIGHTS LEASE

by and between

**ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of
Arizona State University**

and

S/R MARINA HEIGHTS LLC, a Delaware limited liability company

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Exhibit A-1	Legal Description of the Demised Premises
Exhibit A-2	Legal Description of the East ASU Parcel
Exhibit B	Project Site Plan
Exhibit C	Memorandum of Ground Lease
Exhibit D	Improvements Quitclaim Deed
Exhibit E	Dispute Resolution Provisions

MARINA HEIGHTS LEASE

THIS MARINA HEIGHTS LEASE (this "**Lease**") is made and entered into as of August 16, 2013, between ARIZONA BOARD OF REGENTS ("**ABOR**"), a body corporate, for and on behalf of Arizona State University ("**ASU**"), as "**Landlord**", and S/R MARINA HEIGHTS, LLC, a Delaware limited liability company, as "**Tenant**".

RECITALS

A. Landlord and RP HFL LLC, a Delaware limited liability company ("**RP HFL**") are parties to an Amended and Restated Agreement to Lease and Sell and Escrow Instructions dated of even date herewith (the "**Amended and Restated Agreement**"), a Memorandum of which was dated and recorded of even date herewith in the Official Records of Maricopa County, Arizona.

B. RP HFL has partially assigned its rights under the Amended and Restated Agreement to Tenant, who has exercised its right to lease the Demised Premises from Landlord, and Landlord desires to lease the Demised Premises to Tenant. The Demised Premises are a part of a larger mixed-use development known as Marina Heights (the "**Marina Heights Project**") and are intended to be developed in phases (each a "**Phase**") comprising Tenant's project (the "**Tenant Project**"), as depicted on the Project Site Plan. This Lease is subject to the terms, covenants and conditions set forth herein, and Tenant covenants as a material part of the consideration for this Lease to keep and perform each and all of such terms, covenants and conditions.

C. Landlord desires and intends to allow Tenant to develop the Demised Premises and to construct various Improvements thereon subject to the terms and conditions of this Lease.

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

1. DEFINITIONS.

1.1 Additional Charges. As defined in Article 5.

1.2 Additional Rent. As defined in Section 4.1.

1.3 Affiliate. As applied to any entity, means any other entity, that immediately prior to a Transfer, is directly or indirectly controlling, controlled by, or under common control with, the first entity. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that entity, whether through the ownership of voting securities or by contract or otherwise.

1.4 Affiliate Transfer. A Transfer of this Lease to an Affiliate.

1.5 Amended and Restated Agreement. As defined in Recital A.

1.6 Amended and Restated Development Agreement. The Amended and Restated Development Agreement dated as of January 30, 2013, by and among the City, Landlord and RP HFL, recorded in the Official Records of Maricopa County, Arizona on February 20, 2013 as Instrument No. 2013-0160638, as partially assigned to Landlord by RP HFL and thereafter partially assigned to Tenant by Landlord, each by a separate Partial Assignment of Amended and Restated Development Agreement dated and recorded of even date herewith, and as now or hereafter may be amended, modified or assigned.

1.7 Building. Each roofed and walled structure constructed on the real property which is intended for other than temporary use and, where applicable, occupancy as part of the Tenant Project, including parking structures and parking garages.

1.8 Business Day. A day other than a Saturday, Sunday or day which is a legal holiday in the State of Arizona.

1.9 Casualty Event. As defined in Section 14.1.

1.10 CFD. The Rio Salado Community Facilities District.

1.11 Change of Control. As defined in Section 18.1(a).

1.12 City. The City of Tempe, Arizona.

1.13 City Improvement Lease. As defined in Section 3.1(d) of the Amended and Restated Development Agreement.

1.14 City Payments. The plurality of "City Payment," as defined in Section 3.4 of the Amended and Restated Development Agreement, and as applicable to the Demised Premises.

1.15 Claim. As defined in Section 11.1.

1.16 Default. As defined in Section 16.1.

1.17 Default Rate. An annual rate equal to the lesser of (a) two (2) percentage points above the prime annual interest rate published from time to time by The Wall Street Journal under the masthead "Money Rates" as the Prime Rate in effect at the due date (and thereafter adjusted quarterly) or (b) the maximum rate permissible by law. If for any reason The Wall Street Journal does not publish a Prime Rate, the Prime Rate shall be the prime rate announced by a reasonably equivalent responsible financial periodical reasonably selected by Landlord.

1.18 Demised Premises. The real property legally described on Exhibit A-1, together with all easements, rights-of-way, rights, privileges, benefits and appurtenances running with or appurtenant to such real property (the "Land") and all Improvements now or hereafter constructed on such real property, title to which shall automatically vest in Landlord.

1.19 Demolition Activities. As defined in Section 14.1.

1.20 Development Parcel. A portion of the Demised Premises as may be designated by Tenant as a separate development parcel from time to time upon written notice to Landlord including, without limitation, any portion of the Demised Premises comprising one or more condominiums under a condominium regime or one or more subdivided lots under a subdivision plat, in each case established in accordance with applicable Legal Requirements, provided any such division complies with applicable Legal Requirements, any such Development Parcel consists of or is planned for development of at least one Building and has legal access (via public or private dedications or easements) to a public right-of-way, and any remaining portion of the Demised Premises constitutes one or more Development Parcels. Nothing in this definition shall preclude the integrated development of two or more Development Parcels as Tenant deems appropriate and, notwithstanding any such designation, any two or more contiguous Development Parcels may be thereafter incorporated into one Development Parcel.

1.21 East ASU Parcel. The real property legally described on Exhibit A-2.

1.22 Effective Date. As defined in Section 3.1.

1.23 Enhanced Services Area. The Lake and the public park created and maintained on the land on the north and south banks of the Salt River in Tempe, Arizona, along and including the full length of the Lake from fifteen (15) feet back from the leading edge of the top of the one hundred (100) year flood control levee on the South side of the Salt River to fifteen (15) feet back from the leading edge of the top of the one hundred (100) year flood control levee on the North side of the Salt River between the downstream rubber dam to the West and McClintock Drive to the East, more accurately described in the IGA.

1.24 Environmental Law. Any applicable federal, state, or local law, statute, ordinance, rule, regulation, policy, guidance, order, judgment, or decision of any governmental authority relating to the protection of the environment or to any emission, discharge, generation, processing, storage, use, holding, abatement, existence, Release, threatened or potential Release, or transportation of any Hazardous Substance, including any disclosure or reporting obligation thereof, whether to be disclosed or reported to any governmental authority or whether a report or record is required to be maintained internally, including (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §300h *et seq.*; the Clean Water Act, 33 U.S.C. §1251 *et seq.*; the Clean Air Act, 42 U.S.C. §7401 *et seq.*; the Arizona Water Quality Assurance Revolving Fund, A.R.S. §49-281 *et seq.*; the Arizona Water Quality Control Program, A.R.S. §49-201 *et seq.*; and the Arizona Underground Storage Tank Law, A.R.S. §49-1001 *et seq.*, as amended now and as may be amended in the future; and (b) all other Legal Requirements pertaining to reporting, licensing, permitting, approving, investigation, or remediation of emissions, discharges, Releases, or threatened or potential Releases of Hazardous Substances into, onto, or beneath the air, surface water, ground water, or land, or relating to the manufacture, processing, distribution, sale, use, treatment, receipt, storage, disposal, transport, or handling of Hazardous Substances.

1.25 Equivalent Amounts. The amounts equivalent to the amounts that would be payable by the owner of fee title to the Demised Premises under the Finance Plan if the fee holder were not ABOR but were a private person or entity.

1.26 Escrow Agent. First American Title Insurance Company, 2425 E. Camelback Road, Suite 300, Phoenix, AZ 85016, Attention: Carol Peterson, or such other escrow company or escrow offices mutually acceptable to Landlord and Tenant.

1.27 Expiration Date. As defined in Section 3.1.

1.28 Extended Term. As defined in Section 3.2.

1.29 Extended Term Commencement Date. As defined in Section 3.2.

1.30 Fair Market Rental. The rental during the Extended Term that a willing tenant would pay a willing landlord, neither of whom is compelled to rent, pursuant to the terms and conditions of this Lease that apply during the Extended Term, and payable in a lump sum at the commencement of the Extended Term.

1.31 Finance Plan. The finance plan for payment by landowners of land within the CFD of the costs and expenses of construction, operation, maintenance, repair and replacement of the Lake, and other improvements and amenities constructed by the CFD on the Lake or in the levee park within the Enhanced Services Area, which finance plan is attached to the IGA as Exhibit F.

1.32 First C of O. The final (as opposed to conditional) certificate of occupancy issued by the City for first Improvement(s) constructed on each Phase of the Tenant Project.

1.33 First C of O Date. The date the First C of O is issued with respect to Improvements comprising each Phase of the Tenant Project.

1.34 Force Majeure Events. As defined in Article 29.

1.35 GPLET Lease. As defined in Section 28.2(a).

1.36 Hazardous Substances. Any substance that (a) is or contains asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum or petroleum-derived substances or wastes, radon gas, or related materials, (b) requires investigation, removal or remediation or for which there are restrictions, regulations or rules pursuant to any Environmental Law regarding its use, handling or disposal, under any Environmental Law, or is defined, listed, or identified as a "hazardous waste," "Hazardous Substance," "contaminant," "toxic substance," "toxic material," "pollutant," or "hazardous substance," thereunder, or (c) is toxic, explosive, corrosive, flammable, infectious, radiologically contaminated, carcinogenic, mutagenic, or otherwise hazardous and is regulated by any governmental authority or Environmental Law.

1.37 IGA. The Intergovernmental Agreement among Landlord, the City and the CFD recorded on November 19, 1998 as Instrument No. 98-1044603 in the Official Records of Maricopa County, as now or hereafter may be amended or modified.

1.38 Impositions. All taxes (including real and personal property taxes, transaction privilege taxes and possessory interest taxes, if any), City Payments, each Equivalent Amount, any assessments (including assessments hereinafter imposed pursuant to covenants, conditions and restrictions to which Tenant is a party or has consented as well as assessments hereinafter imposed in accordance with applicable Legal Requirements for public improvements or benefits including, if applicable, improvement districts and community facilities districts), water, sewer, electrical, natural gas, telephone, television, communication and other fees, rates and charges, whether foreseen or unforeseen, together with any interest or penalties imposed upon the late payment thereof, and all other charges which at any time during or in respect of the Term of this Lease may be assessed, levied, confirmed or imposed upon or in respect of, or be a lien upon (a) the Demised Premises; (b) the Improvements; (c) any Additional Rent or Additional Charges payable by Tenant hereunder; (d) this Lease and the leasehold estate hereby created; or (e) the possession or use of the Demised Premises.

1.39 Improvements. All office, hotel, retail or other commercial buildings and improvements, together with related streets, curbs, sewers, drainage and flood control structures, sidewalks, hardscape, fences, utilities, landscaping, signs, monumentation, parking improvements and facilities, fountains, artwork and other related structures or improvements of every kind and nature which now, or at any time hereafter, exist upon, above or below the real property within the Demised Premises.

1.40 Improvements Quitclaim Deed. As defined in Section 8.1.

1.41 Lake. The lake in the Salt River bed created by a drop structure in Indian Bend Wash near its outflow into the Salt River, a dam in the Salt River bed approximately one-half mile east of Rural Road and a dam in the Salt River bed approximately one-half mile west of Mill Avenue. The Lake includes, among other items, the dams, the groundwater wells, the diversion structures and related piping and the facilities and equipment related thereto installed at the time of initial construction of the dams and wells.

1.42 Landlord Closing Deliveries. As defined in Section 28.2(a).

1.43 Landlord Insurance Parties. As defined in Article 39.

1.44 Landlord Parties. As defined in Section 11.1.

1.45 Legal Requirements. All present and future laws, ordinances, requirements, orders, directions, permits, licenses, rules and regulations (collectively, a "Requirement") of all governmental authorities having or claiming jurisdiction over the Demised Premises or any part thereof (collectively, a "**Governmental Entity**"), which may be applicable to the Demised Premises or any part thereof. Legal Requirements shall not include any Requirement not in effect as of the Effective Date that is promulgated by ASU unless such Requirement is mandated by any ABOR Requirement (acting in its legislative or rulemaking capacity) or any Requirement promulgated by any other Governmental Entity; provided,

however, that if ABOR (or ASU in furtherance of any Requirement promulgated by ABOR), acting in its legislative or rulemaking capacity, adopts or proposes to adopt a Legal Requirement that Tenant believes will conflict with the terms of this Lease, then upon written request from Tenant to Landlord, senior executives from ASU, ABOR and Tenant shall promptly meet and confer to determine how to address such conflict in order to avoid any impairment of the terms of this Lease agreed to by the parties.

1.46 Legislature. As defined in Section 42.3.

1.47 Lessee Payments. The plurality of all of the annual fixed payments payable to Landlord determined as follows:

(a) One dollar (\$1.00) per square foot of gross building space for office buildings with one floor above ground.

(b) One dollar twenty-five cents (\$1.25) per square foot of gross building space for office buildings with more than one but fewer than eight floors above ground.

(c) One dollar seventy-five cents (\$1.75) per square foot of gross building space for office buildings with eight floors or more above ground.

(d) One dollar fifty cents (\$1.50) per square foot of retail building space, including space that is devoted to the sale of tangible personal property, restaurants, health clubs, hair salons, dry cleaners, travel agencies and other retail services.

(e) One dollar fifty cents (\$1.50) per square foot of hotel or motel building space.

(f) Seventy-five cents (\$.75) per square foot of warehouse or industrial building space.

(g) One hundred dollars (\$100) per parking space located in a parking garage or deck.

(h) One dollar (\$1.00) per square foot of all other vertical improvements not included in subdivisions (a) through (g) of this Section.

For this purpose, the applicable rate shall be determined by the predominant use to which the improvement is devoted. Once determined, the Lessee Payment amount for the Improvement shall remain the same for each year through the Term of this Lease.

1.48 Marina Heights Project. As defined in Recital B.

1.49 Material Default. As defined in Section 16.4.

1.50 Minimum Construction Failure. The failure by Tenant to initiate construction of at least five hundred thousand (500,000) square feet of Improvements on the Demised Premises, or any portion thereof, on or before October 2, 2016, or Tenant's failure

thereafter to pursue such construction with reasonable diligence for a continuous period of two hundred forty (240) days after receipt by Tenant of written notice thereof from Landlord.

- 1.51 New Lease. As defined in **Section 19.15**.
- 1.52 New Lease Notice. As defined in **Section 19.15**.
- 1.53 Non-Appropriated Fund Amount. As defined in **Section 42.3**.
- 1.54 Option to Extend. As defined in **Section 3.2**.
- 1.55 Option to Extend Notice. As defined in **Section 3.2**.
- 1.56 PAD. As defined in **Section 7.4**.
- 1.57 Permitted Mortgage. As defined in **Section 19.1**.
- 1.58 Permitted Mortgagee. As defined in **Section 19.1**.
- 1.59 Phase. Each phase of the Tenant Project as referenced in **Recital B**.
- 1.60 Project Site Plan. The Project Site Plan attached hereto as **Exhibit B**, as and if revised in accordance with the terms of this Lease.
- 1.61 Release. Any releasing, disposing, discharging, injecting, spilling, leaking, leaching, pumping, dumping, emitting, escaping, emptying, seeping, dispersal, migration, transporting, placing and the like, including the moving of any materials through, into or upon, any land, soil, surface water, ground water, or air, or otherwise entering into the environment.
- 1.62 Rent. Thirty Million Nine Hundred Five Thousand Five Hundred Sixty-Nine Dollars (\$30,905,569.00), which is the "Pre-Paid Rent Payment" under the Amended and Restated Agreement, and the Additional Rent.
- 1.63 Separate Lease. As defined in **Section 18.3**.
- 1.64 State Risk Management Division. As defined in **Article 39**.
- 1.65 Sublease. As defined in **Section 18.1(d)**.
- 1.66 Subtenant. As defined in **Section 18.2**.
- 1.67 Tenant Parties. Tenant and its agents, employees and contractors.
- 1.68 Tenant Project. As defined in **Recital B**.
- 1.69 Term. As defined in **Section 3.1**.
- 1.70 Termination Price. As defined in **Section 8.3**.

1.71 Termination Trigger Date. As defined in Section 8.3.

1.72 Third Party. Any person or entity other than Landlord, Tenant or an Affiliate of either of them.

1.73 Transaction Documents. As defined in Section 42.9.

1.74 Transfer. (a) An assignment, sale, hypothecation, or transfer of this Lease; (b) a sublet of all or substantially all of the Demised Premises; or (c) a Change of Control, but excluding transactions described in Section 18.1(d).

1.75 Trigger Event. As defined in Section 28.2.

1.76 Use Restriction. As defined in Section 7.3.

2. DEMISED PREMISES.

Subject to the covenants and conditions herein contained, Landlord hereby leases to Tenant, and Tenant leases from Landlord for the Term, the Demised Premises. Tenant acknowledges that it has examined the Demised Premises, is familiar with the physical condition, expenses, zoning, status of title and use that may be made of the Demised Premises, and is leasing the same in its "AS IS" condition existing on the Effective Date. Landlord has not made and does not make any representations or warranties nor does Landlord have any obligations whatsoever with respect to the Demised Premises or otherwise with respect to this Lease except as expressly provided in this Lease. Tenant assumes all risks resulting from any defects (patent or latent) in the Demised Premises or from any failure of the Demised Premises to comply with applicable Legal Requirements, except as expressly provided in this Lease, or the uses or purposes for which the same may be used or occupied.

3. TERM; OPTION TO EXTEND.

3.1 The Lease term (hereinafter called the "**Term**") shall commence on August 16, 2013 (the "**Effective Date**") and shall expire on the ninety-ninth (99th) anniversary of the Effective Date (the "**Expiration Date**"), unless earlier terminated in accordance with the provisions of this Lease.

3.2 Provided that no Default shall have occurred and be continuing at the time the Option to Extend is exercised, Landlord hereby grants to Tenant an option to extend the initial Term of this Lease ("**Option to Extend**") for a term of not less than twenty-five (25) years and not more than ninety-nine (99) years (the "**Extended Term**") commencing on August 16, 2112 (the "**Extended Term Commencement Date**"). Tenant may exercise this Option to Extend only by giving Landlord written notice thereof (the "**Option to Extend Notice**") not less than the five hundred fortieth (540th) day and no more than the seven hundred thirtieth (730th) day prior to the expiration of the initial Term, which specifies the duration of the Extended Term (and if no duration is specified the Extended Term shall be deemed to be 99 years). If Tenant for any reason fails to timely give Landlord the Option to Extend Notice, the Option to Extend shall terminate and be of no further force or effect whatsoever. If Tenant timely gives Landlord the Option to Extend Notice, the covenants, terms

and conditions between Landlord and Tenant during the Extended Term shall be the same as contained in this Lease for the initial Term, except that Tenant shall have no further right to extend the Term, and except the rent payable during the Extended Term shall be an amount equal the Fair Market Rental of the Demised Premises as follows:

(a) If Tenant delivers an Option to Extend Notice, then no later than the four hundred eightieth (480th) day preceding the Extended Term Commencement Date, Landlord shall notify Tenant of at least four (4) appraisers who are included on Landlord's then current list of approved appraisers, provided such appraiser shall be a certified MAI appraiser with not less than ten (10) years' experience appraising properties similar to the Demised Premises ("**Appraisal Notice**"). Within ten (10) days after receipt of the Appraisal Notice, Tenant shall select and notify Landlord of two (2) appraisers (the "**Appraisers**") from the list submitted by Landlord. Within thirty (30) days after Tenant's selection and notification to Landlord of the Appraisers, each of the Appraisers shall each independently determine the Fair Market Rental of the Demised Premises during the Extended Term, and shall furnish copies of such separate appraisals to Landlord and Tenant. The final Fair Market Rental shall be equal to the average of the two (2) Fair Market Value determined by the Appraisers. The determination of the Fair Market Rental in accordance with the foregoing procedure shall be final and binding upon Landlord and Tenant and shall be enforceable by any court of competent jurisdiction. The appraisal fees and expenses of the Appraisers shall be payable by Landlord.

(b) Tenant shall pay the Fair Market Rental for the Extended Term to Landlord on the later of (i) the commencement of the Extended Term or (ii) two (2) Business Days following the date the Fair Market Rental for the Extended Term is determined in accordance with **Section 3.2(a)**.

Any references in this Lease to the Term shall mean the initial Term if and as extended pursuant to this Section.

4. RENT.

4.1 The Pre-paid Rent Payment due under the Amended and Restated Agreement for the Demised Premises has been fully paid in advance. As further consideration of this Lease of the Demised Premises to Tenant, Tenant shall be obligated to make the Lessee Payments and, if applicable, other payments to Landlord when due pursuant to and subject to the provisions of **Sections 6.1** and **6.3** (the "**Additional Rent**").

4.2 All Additional Rent and Additional Charges to be paid by Tenant to Landlord pursuant to the terms and conditions of this Lease shall be paid in lawful money of the United States to Landlord at its address, or at such other place as Landlord may from time to time designate in writing.

4.3 Any Additional Rent relating to a fiscal period, a part of which is included within the Term hereof and a part of which extends beyond such Term, shall be prorated to the expiration of such Term.

5. ADDITIONAL CHARGES.

Tenant shall pay when due all charges, costs and expenses which Tenant assumes or agrees to pay hereunder, together with all interest and penalties that may accrue thereon in the event of Tenant's failure to pay the same as herein provided, including without limitation any amounts payable on account of a Default by Tenant (collectively, the "**Additional Charges**") and, in the event of their nonpayment, Landlord shall have with respect thereto all rights and remedies herein provided in the event of a Default by Tenant. Additional Charges to be paid directly to Landlord not paid when due shall accrue interest at the Default Rate from the due date of such payment until the date paid. Landlord shall forward copies to Tenant of invoices for any Additional Charges that have been invoiced directly to Landlord at least thirty (30) days before such Additional Charges are due.

6. TENANT PAYMENTS.

6.1 Any excise or transaction privilege tax now or hereafter actually imposed by any government or governmental agency upon and by operation of law which is payable by Landlord, on account of, attributed to, or measured by the amounts payable by Tenant pursuant to this Lease shall be paid by Tenant to Landlord in addition to and along with the Lessee Payments and Additional Charges payable hereunder. Notwithstanding the foregoing, Tenant shall have no obligation to pay any such tax to the extent Landlord voluntarily or contractually subjects itself thereto without a Legal Requirement to do so.

6.2 Tenant shall not be required to pay, or reimburse Landlord for, (i) any local, state or federal capital levy, franchise tax, revenue tax, income tax, or profits tax of Landlord unless and to the extent such levy, tax or impost is in lieu of or a substitute for any other levy, tax or impost, whether now in existence or later imposed, upon or with respect to the Demised Premises which, if such other levy, tax or impost were in effect, would be payable by Tenant under the provisions hereof (but excluding tax imposed pursuant to an "in lieu" agreement entered into by Landlord following the Effective Date of the Amended and Restated Agreement), or (ii) any estate, inheritance, devolution, succession or transfer tax which may be imposed upon or with respect to any transfer (other than taxes in connection with a conveyance by Landlord to Tenant) of Landlord's interest in the Demised Premises.

6.3 Commencing upon each First C of O Date, Tenant shall pay the Lessee Payments as provided in this **Section 6.3**.

(a) For each Phase, commencing on the eighth (8th) anniversary of the First C of O Date for such Phase, and on each anniversary of such date thereafter during the remainder of the Term, Tenant shall pay to Landlord each of the Lessee Payments then due in respect of such Phase. Notwithstanding anything to the contrary herein, Tenant shall have no obligation to make any Lessee Payments prior to the eighth (8th) anniversary of the date of issuance of the First C of O with respect to any such Improvements.

(b) The obligations of Tenant under this **Section 6.3** accrued as of the date of expiration or earlier termination of this Lease shall survive the expiration or earlier termination of this Lease and remain in effect indefinitely until paid in full.

(c) This **Section 6.3** shall be enforceable against all assignees of this Lease and each such assignee shall be subject thereto as if it were a party to this Lease. This **Section 6.3** shall be enforceable against each Subtenant of all of the Demised Premises, and each such Subtenant shall be required to pay the Lessee Payments, provided that such Subtenant's obligation shall be only to make the Lessee Payments directly to Tenant. Subtenants of less than all of the Demised Premises (including, without limitation, Subtenants of space in a Building) shall not be obligated to pay any Lessee Payments, but Tenant shall remain liable for payment of the Lessee Payments attributable to the portion of the Demised Premises or space leased by such Subtenants. Tenant shall cause the obligation to pay the Lessee Payments to be included in each such assignment and in any Sublease of all the Demised Premises and in all lower tier Subleases of all the Demised Premises, as applicable; provided, for the avoidance of doubt, this **Section 6.3** shall not apply to or be enforceable against any Subtenant of less than all the Demised Premises or pursuant to a Sublease of space in a Building and in no event shall any such space Subtenant be considered a Subtenant for purposes of this **Section 6.3**.

6.4 Commencing upon each First C of O Date, Tenant shall pay the City Payments as provided in this **Section 6.4**.

(a) For each Phase, commencing on the First C of O Date for such Phase, and on each anniversary of such date thereafter during the remainder of the Term, unless another date is agreed to, Tenant shall calculate and pay each of the City Payments then due with respect to such Phase directly to the City in accordance with Section 3.4 of the Amended and Restated Development Agreement.

(b) The City is intended and is hereby agreed by Landlord and Tenant to be a third-party beneficiary of Tenant's obligation to pay the City Payments under this **Section 6.4**. The City shall have the right to enforce the obligations of Tenant to pay the City Payments under this **Section 6.4** without participation by or consent of Landlord, including collection activities, commencing and conducting legal action, and judgment realization activities. The rights of the City as third-party beneficiary are non-exclusive and nothing herein shall be interpreted or construed to prevent Landlord from enforcing this **Section 6.4**, from taking enforcement actions in conflict with action taken by the City as third-party beneficiary or from declaring a Default (subject to expiration of applicable notice and cure periods) under or terminating this Lease (if such termination right arises under the provisions of this Lease), as a result of failure by Tenant to perform its obligations under this **Section 6.4**. The City as third-party beneficiary shall not have the right to declare a Default under or to terminate this Lease and shall have no third-party beneficiary contractual rights, except as specifically provided in this **Section 6.4**. The prevailing party in any such action shall pay the other party's costs and expenses directly incurred from any such enforcement action (including attorneys' and paralegal's fees and costs of litigation or other form of dispute resolution proceedings).

(c) If Landlord receives any City Payments that should have been made to the City under this **Section 6.4**, Landlord will forward that payment to the City and will not retain such payment.

(d) The obligations of Tenant under this **Section 6.4** accrued as of the date of expiration or earlier termination of this Lease shall survive the expiration or earlier termination of this Lease and remain in effect indefinitely until paid in full.

(e) This **Section 6.4** shall be enforceable against all assignees of this Lease and each such assignee shall be subject thereto as to any amounts accrued hereunder from and after the effective date of such assignment as if it were a party to this Lease. This **Section 6.4** shall be enforceable against each Subtenant of all of the Demised Premises, and each such Subtenant shall be required to pay the City Payments, provided that such Subtenant's obligation shall be only to make the City Payments directly to Tenant. Subtenants of less than all of the Demised Premises (including, without limitation, Subtenants of space in a Building) shall not be obligated to pay any City Payments, but Tenant shall remain liable for payment of the Lessee Payments attributable to the portion of the Demised Premises or space leased by such Subtenants. Tenant shall cause the obligation to pay the City Payments to be included in each such assignment and Sublease of all the Demised Premises and in all lower tier Subleases of all the Demised Premises, as applicable, and such provisions in each such assignment and Sublease of all of the Demised Premises shall be directly enforceable by the City as a third-party beneficiary; provided, for the avoidance of doubt, this **Section 6.4** shall not apply to or be enforceable against any Subtenant pursuant to a Sublease of space in a Building or to a Subtenant of less than all of the Demised Premises, and in no event shall any such space Subtenant or a Subtenant of less than all of the Demised Premises be considered a Subtenant for purposes of this **Section 6.4**. Nothing in this **Section 6.4** shall be interpreted or construed to require consent by the City to any assignment of this Lease or any Sublease under this Lease.

6.5 Tenant shall pay the Equivalent Amounts as provided in this **Section 6.5**.

(a) Tenant agrees to pay to the CFD the Equivalent Amounts on the dates and at the periodic intervals set by the CFD for payments by CFD landowners of assessments under the Finance Plan.

(b) The obligations of Tenant under this **Section 6.5** accrued as of the expiration or earlier termination of this Lease shall survive the expiration or earlier termination of this Lease and remain in effect indefinitely until paid in full.

(c) The City and the CFD are intended and are hereby agreed by Landlord and Tenant to be third-party beneficiaries of this **Section 6.5**, and each shall have the right to enforce the obligations of Tenant under this **Section 6.5** without participation by or consent of Landlord, including collection activities, commencing and conducting legal action, and judgment realization activities. The rights of the City and CFD as third-party beneficiaries are non-exclusive and nothing herein shall be interpreted or construed to prevent Landlord from enforcing this **Section 6.5**, from taking enforcement actions in conflict with action taken by the third-party beneficiaries or from declaring a Default (subject to expiration of applicable notice and cure periods) under or terminating this Lease (if such termination right arises under the provisions of this Lease) as a result of failure by Tenant to perform its obligations under this **Section 6.5**. The City and CFD as third-party beneficiaries shall not have the right to declare a Default under or to terminate this Lease and shall have no third-party beneficiary contractual rights, except as specifically provided in this **Section 6.5**. The prevailing party in any such

action shall pay the other party's costs and expenses directly incurred from such enforcement action (including attorneys' and paralegal's fees and costs of litigation or other form dispute resolution proceedings).

(d) This **Section 6.5** shall be enforceable against all assignees of this Lease and each of such assignees shall be subject thereto as to any amounts accrued hereunder from and after the effective date of such assignment as if it were a party to this Lease. This **Section 6.5** shall be enforceable against each Subtenant of all of the Demised Premises, and each such Subtenant shall be required to pay the Equivalent Amounts, provided that such Subtenant's obligation shall be only to make the Equivalent Amounts directly to Tenant. Subtenants of less than all of the Demised Premises (including, without limitation, Subtenants of space in a Building) shall not be obligated to pay any Equivalent Amounts, but Tenant shall remain liable for payment of the Equivalent Amounts attributable to the portion of the Demised Premises or space leased by such Subtenants. Tenant shall cause the obligation to pay the Equivalent Amounts to be included in each such assignment and Sublease of all the Demised Premises and in all lower tier Subleases of all the Demised Premises, as applicable, and the provisions in each such assignment and Sublease of all of the Demised Premises shall be directly enforceable by the City or CFD as third-party beneficiaries; provided, for the avoidance of doubt, this **Section 6.5** shall not apply to or be enforceable against any Subtenant pursuant to a Sublease of space in a Building or to a Subtenant of less than all of the Demised Premises, and in no event shall any such space Subtenant or a Subtenant of less than all of the Demised Premises be considered a Subtenant for purposes of this **Section 6.5**. Nothing in this **Section 6.5** shall be interpreted or construed to require consent by the City or the CFD to any assignment of this Lease or any Sublease under this Lease.

6.6 During the Term, but subject to the terms and conditions of this Lease, the Amended and Restated Development Agreement or IGA, Tenant will pay or cause to be paid all Impositions to be paid by Tenant before any interest, penalty, fine or cost may accrue for nonpayment, provided that:

(a) If, by law, any Imposition may, at the option of Tenant, be paid in installments, Tenant may exercise such option (provided that such installments shall not extend beyond the Term of this Lease), in which event Tenant shall pay all such installments (and interest, if any) becoming due during the Term of this Lease as the same become due and payable, and before any further penalty or fine may be added thereto;

(b) Any Imposition relating to a fiscal period of the pertinent imposing authority, a part of which is included within the Term hereof and a part of which extends beyond such Term, shall be prorated to the expiration of such Term; and

(c) Tenant shall, at Landlord's reasonable request made no more frequently than semi-annually, furnish to Landlord official receipts of the pertinent imposing authority or other proof reasonably satisfactory to Landlord evidencing the payment of any Imposition before the same becomes delinquent unless such Imposition is being contested.

(d) Tenant, at its sole cost and expense (except for the costs to be borne by Landlord under **Section 28.5**), may contest the legal validity or amount of any

Imposition for which Tenant is responsible under this Lease, and may institute such proceedings with respect thereto as it considers necessary; provided that (i) nonpayment will not subject the Demised Premises or any part thereof to sale or other liability by reason of such nonpayment, (ii) such contest shall not subject Landlord to the risk of any criminal or civil liability and (iii) if such Imposition must be paid pursuant to any applicable Legal Requirements as a condition to such protest and contest, Tenant shall timely pay such Imposition. Landlord will cooperate with Tenant in every reasonable aspect initiating and prosecuting any and all contests of any Impositions, but without any material out-of-pocket cost or expense to Landlord (except the costs to be borne by Landlord under **Section 28.5**). Tenant shall indemnify, defend and save the Landlord Parties harmless from any Claim for the non-payment of any such Imposition with the exception of any Imposition which is the subject of **Section 28.5**.

6.7 During the Term, Tenant shall be solely responsible for all charges for water, sewer, gas, electricity, telephone, CATV, and all other utility services of every kind and nature supplied to and used on the Demised Premises, including all connection fees and/or pending assessment charges. Any interruptions or impairments of utility services of any nature or in any manner whatsoever shall not affect any of Tenant's obligations under this Lease unless caused by the negligence or willful misconduct of Landlord. Landlord shall cooperate in good faith (but without any material out-of-pocket cost or expense to Landlord) with Tenant in connection with utility services to the Demised Premises.

7. USE OF PREMISES.

7.1 Tenant may use the Demised Premises for any use subject to limitations and restrictions, if any, imposed by applicable Legal Requirements, the Amended and Restated Development Agreement, the IGA, the Use Restrictions referenced below, this Lease and/or (if applicable) covenants or restrictions of record and existing as of the Effective Date.

7.2 Tenant shall not suffer or permit on the Demised Premises the maintenance of any nuisance. Tenant agrees not to permit or commit any waste of the Demised Premises. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty as to the present or future suitability of the Demised Premises for any purpose or use whatsoever except as may be expressly provided in this Lease.

7.3 Tenant acknowledges that the property is subject to that certain Declaration of Use Restriction dated and recorded of even date herewith (the "Use Restrictions").

7.4 Landlord covenants and agrees it shall not pledge or assign the Amended and Restated Development Agreement, or consent to any such pledge or assignment, pertaining to all or any portion of Demised Premises without obtaining the prior written approval of Tenant, which may be withheld in Tenant's sole discretion. The foregoing shall not apply to any such pledge or assignment that solely affects the East ASU Parcel.

8. IMPROVEMENTS; LANDLORD'S RIGHT TO TERMINATE.

8.1 Tenant shall construct Improvements upon the Demised Premises that include a minimum of 2,000,000 square feet in accordance with and subject to final plans

approved by the City and all applicable Legal Requirements, including the Schedule of Performance attached to the Development Agreement dated May 31, 2013 between the City and Tenant, recorded as Instrument No. 2013-0519013 in the Official Records of Maricopa County, Arizona, as may be amended from time to time by the parties to that Development Agreement. Tenant will cause any general contractor engaged by Tenant to construct Improvements to provide (i) customary construction warranties on all Improvements, fixtures and equipment (which shall, at the request of Landlord, be assigned to Landlord on a non-exclusive basis), (ii) customary indemnities (which shall include indemnities of Landlord), and (iii) builder's risk insurance (which may be carried by Tenant, rather than Tenant's general contractor) and liability insurance as provided in **Section 12.1** below, which will name Tenant and Landlord as an additional insured and will have limits of liability commensurate with those set forth in **Section 12.1** below with respect to Tenant. Title to such Improvements, and any alteration, modification or replacement thereof, shall automatically vest in Landlord and become part of the Demised Premises; however, at Landlord's request, Tenant shall execute and deliver to Landlord such further instruments as Landlord reasonably desires to evidence the same including, as applicable, one or more recordable quitclaim deeds as to all or any portion of such Improvements ("**Improvements Quitclaim Deed**") in the form of **Exhibit D**.

8.2 Unless a New Lease is entered into pursuant to **Section 19.15**, possession of all Improvements shall be surrendered to Landlord pursuant to **Section 35.1** at the expiration or earlier termination of this Lease.

8.3 If a Minimum Construction Failure occurs as provided in this Section, (the "**Termination Trigger Date**"), Landlord shall have the right to terminate this Lease by delivery of written notice to Tenant and any Permitted Mortgagee together with a payment of Thirty Million Eight Hundred Fifty-Nine Thousand Two Hundred Eighty-Five and 40/100 Dollars (\$30,859,285.40) (the "**Termination Price**"); provided that if Landlord does not deliver such notice and payment to Tenant within one hundred eighty (180) days following the Termination Trigger Date (as it may be extended pursuant to this Section), Landlord shall have no right to terminate this Lease or any other rights against Tenant by reason of such Minimum Construction Failure. The Termination Price shall not include interest.

8.4 Development of Improvements by Tenant on the Demised Premises and any alteration, modification or replacement thereof shall be generally consistent with the Project Site Plan, as the same may be revised from time to time. Tenant may submit proposed revisions of the Project Site Plan for Landlord's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed so long as the revision (i) is generally consistent with and a logical extension of the existing Project Site Plan or previously submitted Project Site Plan revisions approved by Landlord, as the case may be, and (ii) is generally consistent with the quality of the improvements constructed in the project adjacent to the Marina Heights Project that is commonly referred to as the "Hayden Ferry Lakeside Project" or, following construction of the initial improvements in the Marina Heights Project, with other improvements in the Marina Heights Project. Following the Effective Date, Tenant shall have the right to proceed with rezoning the Demised Premises, including obtaining City approval of amendments to the PAD, so long as such rezoning is consistent with the Project Site Plan and does not impose any material obligations on Landlord. Tenant shall also have the right to proceed with obtaining City approval for any amendments to the development plan review approval for the Demised

Premises, so long as such amendment is consistent with the Project Site Plan and does not impose any material obligations on Landlord. All costs and expenses incurred in connection with such rezoning, PAD approval, development plan review approval and other approvals or any amendments thereto shall be paid by Tenant. Landlord shall timely cooperate in good faith (at no Third Party expense to Landlord) with Tenant in connection with the design and review process by the City including, without limitation, executing consents, submittals, maps of dedication, easements and site plans for the Demised Premises and/or agreements with the City and other applicable authorities whose approval is also required with respect to Demised Premises so long as such actions or documents (a) are consistent with the Project Site Plan, (b) do not impose any material obligations on Landlord (for example, but without limitation, the documents shall not require Landlord to pay any sums or indemnify other parties) and (c) comply with any ABOR Legal Requirements for the granting of rights, such as the ABOR policy related to the granting of easements. Tenant shall give Landlord reasonable advance written notice of all public meetings with the City and hearings relating to such work and shall allow Landlord, or Landlord's agents, to participate in such meetings and hearings as Landlord may desire. So long as this Lease remains in full force and effect and Tenant is not then in breach of any obligation under this Lease beyond any applicable cure period, Landlord may not proceed with any rezoning, PAD approval, development plan review approval or other approvals with respect to Demised Premises without the prior written consent of Tenant (which may be withheld in its sole discretion); provided, however, that nothing shall limit Tenant's right to take any such actions with respect to the ASU East Parcel.

8.5 Tenant shall have the right, from time to time, with respect to the leasehold estate held by Tenant hereunder, and Landlord agrees, at the request of Tenant from time to time, to execute and deliver, as owner of the Demised Premises and the Tenant Project, such public utility and right-of-way easements and similar documents or instruments providing access or utilities to serve the Demised Premises as Tenant may reasonably request and as are reasonably necessary in the development, use, operation and maintenance of the Demised Premises and the business conducted on the Demised Premises. Any instrument now or hereafter creating or imposing covenants, conditions, restrictions, subdivision or condominium regimes on all or part of the Demised Premises is herein referred to as a "**Restrictive Document**". Tenant shall have the right, subject to Landlord's approval as described below, at any time and from time to time during the Lease Term to subject the fee title of all or any part of the Parcel to Restrictive Documents as deemed necessary or desirable by Tenant provided such Restrictive Document (i) is consistent with the Project Site Plan, as the same may be revised from time to time, and applicable Legal Requirements, (ii) does not impose any material obligations on Landlord (for example, without limitation, such Restrictive Covenants shall not require Landlord to pay any sums or indemnify other parties), (iii) is terminable upon the expiration of the Term of this Lease (or the term of any New Lease, if applicable) and any Separate Leases, if applicable or the earlier termination of (A) this Lease (or any New Lease, if applicable), (B) any Separate Leases and (C) any Subleases remaining in effect following the termination of this Lease (or any New Lease, if applicable) pursuant to the terms hereof. Tenant shall submit a copy of any Restrictive Document which Tenant desires to record against Landlord's fee interest to Landlord for its approval which shall be granted if such Restrictive Document meets the requirements in items (i) through (iii) of the preceding sentence. Upon Landlord's approval, Landlord shall cooperate in good faith with the processing of the Restrictive Document, and Landlord shall execute in a timely fashion such consents, plats, maps

of dedication, subdivision agreements, lot splits, or other similar documents or instruments as are reasonably necessary in connection with the Restrictive Document so long as such documents or instruments are consistent with the Project Site Plan and do not impose any material obligations on Landlord.

8.6 If Landlord fails to respond in writing to any written request by Tenant for approval pursuant to this Article 8 (either approving or disapproving) within ten (10) Business Days, then such matter shall be conclusively deemed to have been approved by Landlord. Should Landlord disapprove any such written request by Tenant for approval pursuant to this Article 8, Landlord's response shall contain reasonably detailed reasons for such disapproval, and the parties shall promptly meet and confer to resolve such disapproved items.

9. MAINTENANCE AND REPAIRS.

Subject to the provisions of this Lease dealing with casualty and condemnation, Tenant shall at all times during the Term keep and maintain the Demised Premises, including the Improvements, in good and safe order and condition and repair, howsoever the necessity or desirability of maintenance or repairs may occur. Except to the extent caused by the gross negligence or willful misconduct of any Landlord Party, Landlord shall not be required to maintain or make any alterations, rebuildings, restorations, replacements, changes, additions, improvements or repairs to the Demised Premises.

10. REGULATORY REQUIREMENTS.

10.1 Tenant shall observe and comply in all material respects with all Legal Requirements applicable to the Demised Premises. Tenant shall procure such permits, licenses, certificates and/or governmental approvals required in connection with the construction and operation of any Improvements comprising part of the Demised Premises. Tenant shall pay all costs, expenses, liabilities, losses, fines, penalties, claims and demands including attorneys' fees, that may in any way arise out of or be imposed because of the failure of Tenant to comply with such Legal Requirements except to the extent caused by Landlord's failure to comply with Legal Requirements.

10.2 Tenant will not dispose of, generate, manufacture, process, produce, Release, store, transport, treat, or use, nor will it permit the disposal, generation, manufacture, presence, processing, production, Release, storage, transportation, treatment, or use of Hazardous Substances on, under, or about the Demised Premises in violation of Environmental Laws. In that connection, Tenant agrees that Tenant will comply and cause all of its agents, employees, and contractors to (a) comply with all Environmental Laws; (b) obtain and maintain or cause to be obtained and maintained all permits, licenses, and approvals required under Environmental Laws or otherwise relating to Hazardous Substances; and (c) comply with all conditions and requirements of such permits, licenses, and approvals.

10.3 Tenant hereby indemnifies, holds harmless and agrees to defend each of the Landlord Parties for, from and against any and all Claims with respect to the Demised Premises accruing during the Term on account of or in connection with:

(a) The violation of any Environmental Law by any Tenant Party, any Subtenant or Subtenant's agents, employees, or contractors;

(b) The presence, use, generation, storage or Release of Hazardous Substances occurring during the Term caused or resulting from the acts of any Tenant Party or any Subtenant or Subtenant's employees, agents, or contractors; or

(c) The breach by Tenant of any of its obligations under this

Article 10.

10.4 Without limiting the foregoing, the indemnification in **Section 10.3** shall include any and all costs incurred in connection with any investigations of all or any portion of the Demised Premises or any cleanup, removal, repair, remediation, detoxification or restoration and the preparation of any closure or other plans required or permitted by any governmental authority. Tenant's indemnification and defense obligations shall not extend to the violation of any Environmental Law by any Landlord Party or the presence, use, generation, storage, or Release of Hazardous Substances in, on, under, or above the Demised Premises prior to the Effective Date or any migration or Release of Hazardous Substances from any other property owned by Landlord in, on, under, or above the Demised Premises.

10.5 If (a) Tenant is responsible for remediation costs pursuant to this **Article 10**, or (b) during the Term, there is a Release of Hazardous Substances in, on, under or above the Demised Premises in violation of Environmental Law and not caused by any Landlord Party, Tenant shall promptly conduct a site assessment, take any immediate action required by applicable Legal Requirements for containment of any Release, and prepare and implement a plan for clean-up of the Release and/or Hazardous Substances.

10.6 Tenant's indemnifications and obligations under this **Article 10** shall survive the expiration or termination of this Lease as to events occurring or liability arising prior to the termination of this Lease.

10.7 Except as expressly set forth in any other documents executed by Landlord and Tenant, Landlord shall not be obligated for the remediation of Hazardous Substances or compliance with Environmental Law except for Hazardous Substances Released (a) on any portion of the Demised Premises by any Landlord Party or any migration or Release of Hazardous Substances from any other property owned by Landlord in, on, under, or above the Demised Premises or (b) on any portion of the Demised Premises, by any Third Party prior to the Effective Date; provided that Landlord's liability to Tenant for any such Third Party Release shall be limited to One Hundred Thousand Dollars (\$100,000.00).

11. INDEMNIFICATION.

11.1 Except to the extent caused by the negligence or willful misconduct of Landlord, the State of Arizona, ABOR or their respective regents, officers, employees or agents (collectively "**Landlord Parties**"), Tenant shall save, hold harmless and indemnify Landlord Parties from and against all liabilities, obligations, claims, suits, damages, penalties, causes of action, costs and expenses (including reasonable attorneys' fees and expenses) that accrued during the Term or any other period when Tenant occupies or uses the Demised Premises (each, a "**Claim**", and collectively, "**Claims**") imposed upon or asserted

against a Landlord Party by reason of (i) any use, nonuse or condition of the Demised Premises or any part thereof except as otherwise expressly provided in this Lease, (ii) any accident, injury to or death of persons (including workmen) or loss of or damage to property occurring on the Demised Premises or any part thereof, or (iii) performance of any labor or services or the furnishing of any materials or other property in respect of the Demised Premises or any part thereof by, on behalf of or at the request of Tenant.

11.2 In the event any party to be indemnified under this Article 11 should be made a defendant in any action, suit or proceeding brought by reason of any act or omission of the indemnifying party, the indemnifying party shall, at its own expense resist and defend such action, suit or proceeding by counsel reasonably approved by the indemnified party. If any such action, suit or proceeding should result in any non-appealable final judgment against the indemnified party, the indemnifying party shall promptly satisfy and discharge such judgment or shall cause such judgment to be promptly satisfied and discharged.

11.3 The indemnity obligations in this Article 11 shall survive the expiration of or earlier termination of this Lease as to events occurring or liability accruing during the Term or any other period when Tenant occupies or uses the Demised Premises.

12. TENANT'S INSURANCE. Liability Insurance. Tenant shall purchase and maintain and keep in effect at all times during the Term insurance against claims for personal injuries (including death) or property damage, under a policy of commercial general liability insurance, such that the total available limits will not be less than Five Million Dollars (\$5,000,000) per occurrence, which may be satisfied by any combination of primary, secondary, and other coverages, naming the State of Arizona, ABOR, ASU and their regents, officers, officials, agents, employees and volunteers as additional insureds. The coverage afforded each additional insured shall be primary and shall apply to loss prior to any coverage carried by Landlord. Any insurance or self-insurance maintained by the State of Arizona, ABOR, ASU and their regents, officers, officials, agents, employees and volunteers shall be in excess of Tenant's commercial general liability insurance coverage and shall not contribute with it. Certificates of insurance shall include a copy of the endorsement evidencing additional insured status. The policy shall include coverage for:

- Bodily injury
- Broad form property damage (including completed operations)
- Personal injury
- Blanket contractual liability

Products and completed operations and this coverage shall extend for one year past the actual completion of construction of all Improvements.

In the event that the general liability insurance coverage is written on a "claims made" basis, coverage shall extend for two (2) years past expiration or termination of this Lease.

12.2 Workers' Compensation Insurance. During all periods of the Term when Tenant has employees, Tenant shall purchase and maintain and keep in effect at all times during

the Term workers compensation and employers liability insurance as required by the State of Arizona Workers Compensation statutes as follows:

Workers Compensation (Coverage A)	Statutory Arizona benefits
Employers Liability (Coverage B)	\$500,000 each accident
\$500,000 each employee/disease	
\$1,000,000 policy limit/disease	

This policy shall include endorsement for All State coverage for state of hire.

12.3 Automobile Liability Insurance. During all periods of the Term when Tenant has employees, Tenant shall purchase and maintain and keep in effect business automobile liability insurance, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit. Declarations to include owned, non-owned and hired motor vehicles, applicable to claims arising from bodily injury, death or property damage arising out of the ownership, maintenance or use of any automobile. The policy shall be endorsed to add the State of Arizona, ABOR, ASU and their regents, officers, officials, agents, employees or volunteers as additional insureds and shall stipulate that the insurance shall be primary, and that any self-insurance or other insurance carried by the State of Arizona, ABOR, ASU or any of their regents, officers, officials, agents, employees or volunteers shall be excess and not contributory to the insurance provided by Tenant.

12.4 Property Insurance. Tenant shall maintain and keep in effect (or cause to be maintained and kept in effect) at all times during the Term insurance on the Demised Premises and Improvements against loss or damage by fire, lightning, windstorm, hail, explosion, vandalism, malicious mischief, equipment breakdown, business income and extra expense and damage from aircraft and vehicles and smoke damage, naming Landlord as a loss payee as to its interest pursuant to **Section 14.2**. Such insurance shall include at a minimum cleanup coverage to pay costs and expenses to return the Demised Premises to their condition prior to any Improvements being constructed thereon, including removal of all debris and the remainder of the Improvements (including removal of underground portions and foundations of the Improvement), and remediation and removal of any and all Hazardous Substances Released by the casualty causing the loss to the Improvements.

12.5 Evidence of Insurance. Upon the Effective Date, and no less than annually thereafter, Tenant shall deliver to Landlord certificates of insurance and any additional documentation reasonably requested by Landlord (including, without limitation, policy endorsements) to assure compliance with this **Article 12** reasonably acceptable to the State of Arizona, ABOR and ASU, which shall identify this Lease and naming the State of Arizona, ABOR, ASU and their regents, officers, officials, agents, employees or volunteers as additional insureds for general liability coverage and auto liability coverage, and as loss payees as to its interest pursuant to **Section 14.2** for property coverage as to acts and omissions of Tenant and others for which Tenant is responsible under Legal Requirements and as to all liability coverages shall stipulate that Tenant's insurance shall be primary and that any self-insurance or other insurance carried by the State of Arizona, ABOR, ASU or any of their regents, officers, officials, agents, employees or volunteers shall be excess and not contributory to the insurance provided by Tenant. If any of the insurance policies required by this **Article 12** are cancelled prior to the

stated expiration date, notice thereof will be given in accordance with the policy provisions, and further notice thereof promptly will be given by Tenant to Landlord. All coverages, conditions, limits and endorsements shall remain in full force and effect as required in this Lease.

12.6 Copies and Additional Information. The State of Arizona, ABOR and ASU shall be provided upon request certified copies of all policies and endorsements. If Tenant's insurance carrier will not provide certified copies, each copy of a policy shall include a copy of all endorsements and shall be accompanied by a letter from Tenant's insurance broker or Tenant's authorized agent stating that Tenant's insurance carrier will not provide certified copies of insurance policies and endorsements and that the enclosed copy of the policy and endorsements is a true, correct and complete copy of the respective insurance policy and all endorsements to the best of the broker's or authorized agent's knowledge. In addition, Tenant agrees to reasonably cooperate with Landlord in obtaining any and all information demonstrating Tenant is in compliance with the insurance requirements of this **Article 12**.

12.7 Landlord Procurement; Availability of Insurance Coverage. Failure on the part of Tenant to meet the requirements concerning insurance in this **Article 12** within ninety (90) days of Landlord's notice to Tenant of such failure (or such shorter period as may be necessary to avoid a cancellation or lapse of any insurance) shall constitute a Default under this Lease, or, in Landlord's discretion, Landlord may procure or renew such insurance and pay any and all premiums in connection therewith if Tenant does not cure such failure within thirty (30) days of notice from Landlord to Tenant (or such shorter period as may be necessary to avoid a cancellation or lapse of any insurance) specifying such failure, and all monies so paid by Landlord shall be repaid by Tenant as Additional Charges upon demand. If the insurance required under this **Article 12** becomes unavailable at commercially reasonable costs, Tenant shall provide written notice for Landlord of such event together with Tenant's proposal for replacement insurance coverage for Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

12.8 Claims Reporting. Any failure to comply with the claims reporting provisions of the policies or any breach of policy warranty shall not affect coverage afforded under the policy to protect the State of Arizona, ABOR, ASU, and their regents, officers, officials, agents, employees and volunteers.

12.9 Self-Insurance. Tenant shall have the right to self-insure any of the risks which it is obligated to insure pursuant to **Sections 12.1, 12.3** and **12.4**, provided that: (a) Tenant has and maintains a credit rating of AA by Standard & Poors (or any successor thereto) (the "**Financial Rating**"); (b) such self-insurance shall comply with all requirements of this **Article 12** to the extent applicable; and (c) at the time Tenant elects to self-insure and annually thereafter, Tenant shall deliver written notice to Landlord of the amount of the self-insurance maintained by Tenant with respect to the policies in **Sections 12.1, 12.3** and **12.4** and the specific risks which Tenant has elected to self-insure, and if requested by Landlord, (i) evidence reasonably satisfactory to Landlord of Tenant's adherence to the Financial Rating, and (ii) a statement including the information contained in an "Accord" form describing such self-insurance. In this Lease, "self-insurance" shall mean that Tenant is itself acting as though it were the insurance company providing the insurance required under this provisions hereof and Tenant shall pay any amounts due in lieu of insurance proceeds which would have been

payable if such insurance coverage had been carried. The right to self-insure shall terminate upon any Default by Tenant under this Lease.

12.10 Modification of Insurance Requirements. From time to time during the Term, but not more often than once in any ten (10) year period, Landlord may require that the insurance coverages specified in Sections 12.1 through 12.3 be modified to the amounts then reasonable and customary for ground lease tenants of similar properties.

13. LIENS.

13.1 Tenant shall be responsible for all costs and charges for any work done by or for Tenant on or about the Demised Premises or in connection with Tenant's occupancy thereof, and, subject to the provisions of Section 13.2, Tenant shall keep the Demised Premises free and clear of all mechanics' liens and other liens and encumbrances on account of work done for or authorized by Tenant or persons or entities claiming under it or arising out of Tenant's occupancy of the Demised Premises or bond over such liens according to Arizona law. Tenant shall indemnify and hold Landlord harmless against any and all Claims on account of such claims of lien or other encumbrances of laborers or material men or others for work performed or materials or supplies furnished for or authorized by Tenant or persons or entities claiming under it.

13.2 If, because of any act or omission (or alleged act or omission) of Tenant or persons or entities claiming through Tenant, any mechanics', materialmen's or other lien, charge or order for the payment of money shall be filed or recorded against Landlord's estate in the Demised Premises or against Landlord (whether or not such lien, charge or order is valid or enforceable as such), Tenant shall, at its own expense, cause the same to be released and discharged of record within thirty (30) days after Tenant shall have received notice of the filing or recording thereof, or Tenant may, within said period, record a surety bond pursuant to A.R.S. § 33-1004, in the case of mechanics' or materialmen's liens, or furnish to Landlord a bond, letter of credit or other instrument reasonably satisfactory to Landlord against any other lien, charge or order, in which case Tenant shall have the right in good faith to contest the validity or amount thereof provided that:

- (a) the fee estate of Landlord shall not be thereby encumbered;
- (b) such proceedings shall operate to suspend the collection of the claim from Landlord and the Demised Premises; and
- (c) Landlord shall not thereby become subject to any civil or criminal liability for Landlord and Tenant's failure to comply.

13.3 Should any claims of lien or other encumbrances be filed against the Demised Premises, the party receiving notice of such lien or action shall promptly give the other party written notice thereof.

14. DAMAGE OR DESTRUCTION.

14.1 In the event, at any time during the Term hereof, the Demised Premises, including the Improvements or any part thereof, are damaged or destroyed by fire or any other occurrence of any kind or nature (a “**Casualty Event**”), Tenant shall proceed with reasonable diligence with the work of repairing or restoring the same using any proceeds from insurance maintained by Tenant to complete such restoration (the “**Work**”) unless Tenant determines in its good faith discretion that it would not be financially viable for Tenant to repair or restore the Improvements or such affected part thereof or that Tenant cannot accomplish such repair in the time and manner required by this Article 14, in which case Tenant shall demolish and remove any damaged Improvements or part thereof, together with all rubble and debris related thereto, and, if applicable, grade the portion of the real property underlying the damaged Improvements to the level of the adjoining property in such a manner as to comply with applicable Legal Requirements and not adversely affect the drainage of the Demised Premises or any portion thereof (collectively the “**Demolition Activities**”). Such Demolition Activities shall be commenced as soon as reasonably practical and shall be diligently pursued to completion within one hundred eighty (180) days following the Casualty Event, provided that if such Demolition Activities cannot reasonably be completed within one hundred eighty (180) days, Tenant shall have such additional period as is reasonably necessary to complete such Demolition Activities so long as it is diligently pursuing such completion.

14.2 All insurance proceeds on account of such damage or destruction under the policies of insurance maintained by Tenant as provided for in Section 12.4 not used to pay the cost of the Work and Tenant’s other reasonable costs incurred in connection with such Casualty Event or the Work or, if applicable, the Demolition Activities (the “**Remaining Proceeds**”) shall be paid to Landlord and Tenant as follows: (i) Tenant shall receive that portion of Remaining Proceeds equal to the lesser of (a) the then fair market value of Tenant’s leasehold interest in the Demised Premises, and (b) the Remaining Proceeds; and (ii) Landlord shall receive the remainder, if any, of the Remaining Proceeds. If such Casualty Event results in damage and destruction to substantially all of the Improvements located within the Demised Premises, this Lease shall terminate at Tenant’s election.

14.3 If such Casualty Event results in damage and destruction to substantially all of the Improvements located within the Demised Premises and the Work shall not have been commenced within three hundred sixty-five (365) days after the final adjustment of insurance proceeds by Tenant’s insurer, but in no event later than five hundred forty (540) days after the date of such damage and destruction (as such time period may be extended for Force Majeure Events pursuant to Article 29), and thereafter prosecuted diligently and in a commercially reasonable manner to completion within a reasonable period of time, taking into account the nature and magnitude of the Casualty Event, Landlord shall have the right to terminate this Lease upon at least thirty (30) days prior written notice to Tenant and receive its share of any Remaining Proceeds, if any.

14.4 In no event shall Tenant be entitled to any abatement, allowance, reduction or suspension of the Additional Rent and Additional Charges on account of all or any portion of the Demised Premises being untenable owing to the partial or total destruction thereof and no such damage or destruction shall affect in any way the obligation of Tenant to

pay the Additional Rent and Additional Charges nor release Tenant of or from obligations imposed upon Tenant under this Lease.

15. EMINENT DOMAIN.

15.1 If the whole of the Demised Premises shall be taken or condemned under the right of eminent domain or if such a substantial part of the Demised Premises shall be taken as shall result in the portion remaining being, in Tenant's reasonable determination, unsuitable for the use being made thereof at the time of such taking, then this Lease shall terminate as of the date upon which title shall vest in such condemning authority.

15.2 The net awards or payments on account of any taking shall be apportioned as follows:

(a) Tenant shall receive from the award an amount equal to the lesser of (i) the then fair market value of Tenant's leasehold interest in the Demised Premises, and (ii) the award; and

(b) Landlord shall receive the remainder, if any, of the award.

15.3 If only a part of the Demised Premises shall be so taken or condemned and the part not so taken can, in Tenant's reasonable judgment, be adapted for the use then being made thereof, this Lease shall remain in full force and effect, with no reduction in or refund of Additional Rent or Additional Charges accrued prior to the date upon which title shall vest in the condemning authority.

15.4 In the event of any taking or condemnation of any portion of the Demised Premises, the Additional Rent and Additional Charges thereafter payable by Tenant hereunder shall be reduced, effective as of the date of Tenant's loss of use thereof, by a fraction the numerator of which shall be the total square footage of the leased land taken and the denominator of which shall be the total square footage of the leased land legally described on Exhibit A-1 immediately prior to the taking or condemnation.

15.5 If the award or payments on account of any taking shall not be divided or apportioned by the court or the condemning authority into the portions set forth in Section 15.2, and if Landlord and Tenant shall be unable to agree on such apportionment within sixty (60) days of the date upon which title vests in the condemning authority, then such apportionment shall be determined by appraisers pursuant to this Section 15.5:

(a) Landlord and Tenant shall each appoint an appraiser within ninety (90) days of the date upon which title vests in the condemning authority. The two appraisers so appointed shall promptly appoint a third appraiser within one hundred twenty (120) days following the date upon which title vests in the condemning authority. If a party fails to timely appoint an appraiser, no third appraiser shall be appointed, and the appraiser selected by the other party shall determine the apportionment within one hundred eighty (180) days of the date upon which title vests in the condemning authority.

(b) Within forty-five (45) days after the appointment of the third appraiser (if necessary), the two appraisers appointed by Landlord and Tenant shall each determine and report to the third appraiser the appropriate apportionment. Within ten (10) days thereafter, the third appraiser shall determine which of the two apportionments determined by the appraisers appointed by Landlord and Tenant is the more appropriate apportionment and the apportionment chosen by the third appraiser shall be final and binding upon the parties and enforceable by any court of competent jurisdiction.

(c) All appraisers shall be members of the American Institute of Real Estate Appraisers (M.A.I.) or, if such Institute shall not then exist, members of its successor organization or an organization of substantially equivalent stature. The fees of the appraisers shall be borne equally by Landlord and Tenant.

15.6 Each of Landlord and Tenant shall have the right, at its own expense, to appear in any condemnation proceeding and participate in any and all hearings, trials and appeals therein. If either Landlord or Tenant shall receive notice of any proposed or pending condemnation proceedings affecting the Demised Premises or any part thereof, the party receiving such notice shall promptly notify the other party of such notice and contents thereof.

16. DEFAULTS AND REMEDIES.

16.1 The occurrence of any one or more of the following events shall constitute a “**Default**” hereunder by Tenant:

(a) The failure by Tenant to pay Additional Rent or to make any other payments due under Article 6 or any Additional Charges or any other sums and charges required to be paid by Tenant hereunder, as and when due, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant.

(b) Subject to Article 29, the failure by Tenant to observe or perform any of the provisions of this Lease to be observed or performed by Tenant, other than as specified in (a) above, where such failure shall continue for a period of ninety (90) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant’s failure is such that more than ninety (90) days are reasonably required for its cure, then Tenant shall not be deemed to be in Default if Tenant shall commence such cure within said ninety (90) day period and thereafter diligently prosecute such cure to completion.

16.2 Subject to Section 16.4 and in the event of any such Default by Tenant, Landlord may exercise any other rights or remedies available to Landlord at law or in equity following the giving of notice in the form and in accordance with the provisions of Section 37.

(a) Landlord may give written notice to Tenant of Landlord’s election to terminate this Lease, peaceably reenter the Demised Premises with or without process of law and take possession of the same and of all equipment and fixtures therein, and expel or remove Tenant and all other parties occupying the Demised Premises, without breach of the peace, without being liable to any prosecution for such reentry. Upon such termination, Landlord shall be entitled to recover from Tenant all Additional Rent and Additional Charges accrued and unpaid for the period up to and including the date of such termination, but not Rent, Additional

Rent, or Additional Charges for any period after the date of termination. Upon such termination, Tenant shall not be entitled to a refund of any Rent, Additional Charges or other sums paid to Landlord under this Lease prior to such termination.

(b) If Tenant should be in default in the performance of any term or covenant on Tenant's part to be kept, observed or performed hereunder, at its option, Landlord may make any such payment or perform any such covenant for the account of Tenant. If Landlord makes any expenditure or incurs any obligation for the payment of money in connection therewith, the same shall be due and payable by Tenant upon demand, together with interest thereon at the Default Rate from the date paid by Landlord until repaid, and if Tenant should fail to pay such sum, with interest, within thirty (30) days following demand, such failure shall constitute a Default hereunder.

16.3 Subject to any limitations in this Lease, all remedies specifically granted in this Lease to Landlord shall be non-exclusive remedies and shall be in addition to any other remedies available to Landlord at law or in equity.

16.4 Notwithstanding the provisions of this **Article 16** or any other provision of this Lease, Landlord may not terminate this Lease due to a Default by Tenant unless such Default is a "**Material Default**" as defined by this **Section 16.4**. For purposes of this **Section 16.4**, a Material Default shall mean a Default arising from (a) any failure to make any payments due under **Article 6** or any other sums or charges required to be paid by Tenant when due hereunder which failure is not cured within thirty (30) days of written notice thereof, (b) any failure of Tenant to honor the indemnity provisions of this Lease, (c) any failure to maintain the insurance required by **Article 12** herein (but only if and to the extent such insurance coverage is reasonably available for purchase), or (d) any other breach by Tenant which materially and adversely affects the Demised Premises or Landlord's interest therein which continues beyond the applicable notice and cure period.

16.5 Pursuant to the Amended and Restated Development Agreement, Tenant's failure to make City Payments pursuant to this Lease requires Landlord to terminate this Lease if such failure continues for a period exceeding two hundred seventy (270) days after receipt by Landlord from the City of written certification that Tenant has failed to pay when due a City Payment. If Tenant has failed to pay any of the City Payments within one hundred (100) days after receipt by Landlord of the applicable certification, Landlord may pay such City Payment on Tenant's behalf. All sums so paid by Landlord shall be payable on demand and shall accrue interest, until paid, at the Default Rate commencing on the later of (a) thirty (30) days following Landlord's notice to Tenant of Tenant's failure to pay such City Payment, or (b) the date of such payment by Landlord to the City.

16.6 Pursuant to the IGA, Tenant's failure to pay any Equivalent Amounts pursuant to this Lease requires Landlord to terminate this Lease if such failure continues for a period exceeding one hundred twenty (120) days after receipt by Landlord from the CFD of written certification that Tenant has failed to pay when due any Equivalent Amounts. If Tenant has failed to pay any Equivalent Amount within one hundred (100) days after receipt by Landlord of the applicable certification, Landlord may pay such Equivalent Amounts on Tenant's behalf. All sums so paid by Landlord shall be payable on demand and shall accrue

interest, until paid, at the Default Rate commencing on the later of (a) thirty (30) days following Landlord's notice to Tenant of Tenant's failure to pay any Equivalent Amount or (b) the date of such payment by Landlord.

16.7 Notwithstanding anything to the contrary in this Lease, Landlord shall look solely to the assets of Tenant, including, but not limited to, the interest of Tenant in this Lease and in any Subleases and Improvements, for the satisfaction of any judgment, decree, order or award requiring the payment of money by Tenant based upon any Default by Tenant under this Lease, and not to the assets of any partner, joint venturer, participant, member or shareholder (or any Affiliate of such parties) in Tenant.

16.8 Without limiting the other remedies in this Lease, if there has been an adjudication by an arbitration or litigation that has resulted in a final non-appealable monetary judgment or award against a party hereunder, the prevailing party shall have the right to offset the amount of any such award against future payments payable by the prevailing party under this Lease

17. LANDLORD'S DEFAULT.

In the event of breach of this Lease by Landlord, Tenant shall, before exercising any remedy available to it, give Landlord written notice of the claimed breach. For thirty (30) days following such notice Landlord shall have the right to cure the breach, or, if such breach cannot be cured within that time, such additional time as may be necessary if within such 30 days Landlord has commenced and is diligently pursuing the remedies necessary to cure such breach. If such breach remains uncured, then Tenant may, at its option and as its sole remedies, have any one or more of the following described remedies: (i) pursue an injunction to enjoin the breach; (ii) pursue specific performance of Landlord's obligations under this Lease; or (iii) seek money damages for loss arising from Landlord's failure to discharge its obligations under this Lease. Nothing in this Lease shall affect Tenant's remedies against Landlord in the event of a wrongful eviction or wrongful constructive eviction as to all or any part of the Demised Premises.

18. ASSIGNMENT AND SUBLETTING.

18.1 Transfers. With Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed, Tenant may at any time and from time to time during the Term of this Lease Transfer all of its right, title and interest in respect of either (a) all of the Demised Premises or (b) one or more Development Parcels. Landlord shall be deemed to have consented to any proposed Transfer if it fails to notify Tenant of its specific objections to the Transfer within thirty (30) days following receipt of a request for Landlord's consent. Notwithstanding the foregoing or anything herein to the contrary, Landlord's consent shall not be required for any Affiliate Transfer (but Tenant shall provide Landlord at least thirty (30) days advance notice of any Affiliate Transfer).

(a) The sale, issuance or transfer of fifty percent (50%) or more of any direct or indirect legal or beneficial ownership in Tenant (a "**Change of Control**") shall be deemed to be a Transfer of this Lease.

(b) Tenant shall be relieved of its obligation to pay all Additional Rent and Additional Charges and perform all the other obligations to be performed by Tenant hereunder following a Transfer of all of Tenant's right, title and interest in and to the Demised Premises so long as (i) Tenant complies with this **Section 18.1** and (ii) the assignee, in a written instrument executed by Tenant and the assignee, assumes and agrees to be bound by, and to perform the terms, covenants and conditions of this Lease and of any Partial Assignment and Assumption of the Amended and Restated Development Agreement, in each instance with respect to terms, covenants and conditions which apply following the effective date of such Transfer. An executed copy of such assignment shall be delivered to Landlord promptly following such Transfer.

(c) A Sublease of all of the Demised Premises shall include Subtenant's agreement in writing to assume, to be bound by, and to perform the terms, covenants and conditions of this Lease and of any Partial Assignment and Assumption of the Amended and Restated Development Agreement, in each instance with respect to such obligations arising after the effective date of such Transfer and during the entire term of the Sublease. One executed copy of any such written instruments shall be delivered to Landlord.

(d) The term "Transfer" shall not apply to (a) any leaseback arrangement with a "government lessor", as defined in A.R.S. §42-6201; (b) any other sale/leaseback, lease/leaseback or assignment/leaseback transaction entered into for financing purposes; (c) any assignment, sale, hypothecation, encumbrance, or transfer to a Permitted Mortgagee or to any purchaser of Tenant's leasehold interest at a foreclosure sale or in lieu of foreclosure of a Permitted Mortgage; or (d) any sublease of any tier of one more Development Parcels comprising a portion of the Demised Premises or of any Building or any portion of a Building (each, a "**Sublease**"), so long as such Sublease does not include all or substantially all of the Demised Premises or a Development Parcel for all or substantially all of the entire remaining Term, in which case the Sublease shall constitute a Transfer for purposes of this Lease. Tenant may enter into such Subleases without Landlord's consent on such terms and conditions as Tenant may deem to be appropriate in light of all the circumstances; provided that no Sublease shall permit the use of the Demised Premises for any purpose contrary to the provisions hereof nor shall any Sublease be for a term extending beyond the Term and each Sublease shall be subject to all of the terms and conditions of this Lease. No Sublease shall release Tenant from any of Tenant's obligations under this Lease.

18.2 Effect of Termination on Subleases. Termination of this Lease by Landlord, by cancellation or otherwise, shall not serve to cancel subtenancies of any tier in compliance with this **Article 18** but shall operate as an assignment to Landlord of any and all Subleases. Provided that a Subtenant under a Sublease (a "**Subtenant**") is not in default under the terms, covenants or conditions of its Sublease beyond any applicable notice and cure period and Subtenant attorns to and accepts Landlord as successor sublessor to Tenant, Landlord shall honor such Sublease and shall not disturb the tenancy of such Subtenant except in accordance with the applicable provisions of such Sublease, including honoring the rights of any mortgagees in respect of such Sublease:

(a) except that Landlord shall not be: (i) liable for any act or omission of (A) any prior sublessor (including Tenant) under the Sublease; or (B) Subtenant (or its

successors or permitted assigns) under the Sublease; or (ii) subject to any offsets or defenses which Subtenant may have against any prior sublessor (including Tenant) under the Sublease; or (iii) bound by any payment which Subtenant might have paid for more than one month in advance to any prior sublessor (including Tenant); or (iv) bound by any provision set forth in the Sublease requiring any prior sublessor (including Tenant) to indemnify or hold Subtenant harmless; or (v) liable for any security deposit unless actually delivered to Landlord; or (vi) responsible for representations, warranties, covenants and indemnities of any prior sublessor (including Tenant) except to the extent that such representations, warranties, covenants and indemnities apply to the Demised Premises and relate to the operation of the Demised Premises after assignment of the Sublease to Landlord; or (vii) liable for any prior sublessor's (including Tenant's) obligations for alterations, demolition, or other improvements or work at the Demised Premises; provided that (A) Landlord shall remain responsible for construction related obligations for reconstruction or repair following a Casualty Event, but only to the extent of the insurance proceeds actually received by Landlord for such reconstruction and repair; (B) Landlord shall remain responsible for day-to-day maintenance and repairs required of any prior sublessor (including Tenant), and (C) Subtenant may elect to complete such sublessor's (including Tenant's) obligations for alterations, demolition, or other improvements or work and offset Subtenant's costs to complete from minimum fixed rent payments due under the Sublease; and

(b) no Subtenant shall be required to make any payment to Landlord unless and until such Subtenant shall have received written notice from Landlord of the termination of this Lease and direction that payments and performance thereafter be made directly to Landlord. Thereafter, upon such Subtenant's timely payment or performance to Landlord, Landlord shall not be entitled to claim a default for not having received any corresponding payment or performance from Tenant. If a Subtenant receives conflicting written notices demanding payment or performance from Landlord and Tenant, such Subtenant shall have the right to interplead such payment and/or other matters in any court of competent jurisdiction, in which event such Subtenant shall not be deemed in default. Payment or performance when and as ordered by such court shall constitute full performance. So long as a Subtenant has made payment or performance to Landlord or interpleaded such matters and is not subject to termination for default of the pertinent Sublease, Landlord shall not join that Subtenant as a party defendant in any action or proceeding or take any other action for the purpose of terminating Subtenant's interest and estate because of any default under or termination of this Lease.

(c) The terms of this Section 18.2 are self-effectuating; provided, however, at the request of a Subtenant, Landlord shall cooperate with such Subtenant in executing a separate instrument setting forth the terms of this Section 18.2, but Tenant shall reimburse Landlord for all administrative and legal fees incurred by Landlord in connection with such instrument.

(d) All Subtenants shall be intended third-party beneficiaries under this Section 18.2.

18.3 Separate Leases. Upon a Transfer by an assignment in respect of one or more Development Parcels for all of the remaining Term in compliance with Section 18.1,

including to an Affiliate of Tenant, Landlord shall promptly following written request by the Tenant and transferee and without the need for any further approval from ABOR or any other approving authority enter into a separate lease (a "**Separate Lease**") with Tenant's transferee covering the Development Parcel(s) which are the subject of such Transfer, in a form substantially similar to this Lease, and upon the same terms and conditions as are set forth herein except as otherwise provided in this **Section 18.3**, and except that the term of such Separate Lease shall correspond to the remaining Term of this Lease. Upon execution of a Separate Lease for a Development Parcel(s), this Lease shall automatically be amended to exclude such Development Parcel(s) and all obligations of Tenant with respect to such Development Parcel(s), and either party shall, at the request of the other, execute an amendment to evidence such exclusion. Each such Separate Lease shall be separate from this Lease and no default under or termination of a Separate Lease shall affect this Lease or other Separate Leases.

(a) Additional Rent and Additional Charges (as applicable) shall be proportionately allocated to each Separate Lease based on the agreement of Tenant and such transferee which reasonably allocates the obligations of each or, if no such agreement is reached, then based on the rentable square footage of the Improvements which are the subject of each such Separate Lease as compared to the rentable square footage of all Improvements included in the Tenant Project; provided that the total Additional Rent and Additional Charges under this Lease and all Separate Leases shall equal the amount of Additional Rent and Additional Charges that would have been payable if such Separate Leases had not been executed. Following the date of such Transfer resulting in a Separate Lease, Tenant shall be released from all obligation to pay Additional Rent and (as applicable) Additional Charges accruing on or allocated to the Development Parcel(s) which are subject to such Separate Lease and any Default or indemnity arising under the Separate Lease or otherwise relating to the Development Parcel(s) subject to the Separate Lease which may arise after the date of the Transfer. The transferee, as tenant under the Separate Lease, shall have no liability for any obligation or Default arising under this Lease before or after the Transfer in respect of any of the Demised Premises other than the Development Parcel(s) subject to the Separate Lease.

(b) If any transferee other than an Affiliate of Tenant fails to perform its obligations as tenant under its Separate Lease, and so long as this Lease remains in effect as to any of the Demised Premises, Landlord shall concurrently provide any Permitted Mortgagee under the Separate Lease of which it has received notice and Tenant with the notices, rights and opportunities to cure as are afforded to Permitted Mortgagees under **Article 19** hereof and Tenant shall have the right, but not the obligation, to cure such default if any Permitted Mortgagee fails to exercise its rights to cure such default as provided in such Separate Lease. If Tenant elects to cure such default, Tenant shall cure the default within thirty (30) days from the expiration of any Permitted Mortgagee's time period to cure whereupon Tenant shall have the right, but not the obligation, to assume the transferee's right, title and interest in and to the pertinent Development Parcel(s) which are the subject of such Separate Lease, subject to the rights of any Permitted Mortgagee thereunder, but shall have no liability for any obligation or default arising under such Separate Lease prior to the date of such assumption. In the event Tenant elects to so cure and to assume the transferee's right, title, and interest in and to the pertinent Development Parcel(s) which is the subject of a Separate Lease and has terminated the rights of the transferee thereunder, Landlord shall, at Tenant's request, terminate the existing Separate Lease and execute a new Separate Lease as to the pertinent Development Parcel(s) with

Tenant for the remainder of the term of and on the same terms and conditions contained in the terminated Separate Lease.

19. HYPOTHECATION OF LEASEHOLD ESTATE.

19.1 Tenant, from time to time, and without further approval from Landlord, may in any manner mortgage, pledge or encumber Tenant's leasehold estate in the Demised Premises and rights under this Lease to secure any obligation of Tenant, including, without limitation, in connection with a so-called carryback purchase money loan made by Tenant to an assignee of this Lease with respect to the entire Demised Premises or any Development Parcel (such lien may be referred to herein as a "**Permitted Mortgage**," and any holder of any such lien shall be referred to herein as a "**Permitted Mortgagee**"). A Permitted Mortgagee may enforce such lien and acquire title to Tenant's leasehold estate in any lawful way without further approval from Landlord, and, pending foreclosure of such lien, the Permitted Mortgagee may take possession of, develop, use and operate the Demised Premises, performing all obligations performable by Tenant, and upon foreclosure of such lien by power of sale, judicial foreclosure or acquisition of the leasehold estate by deed in lieu of foreclosure, the Permitted Mortgagee may, upon notice to Landlord, but without consent from Landlord, sell and assign the leasehold estate hereby created. No lien of any Permitted Mortgagee or the foreclosure thereof shall extend to or affect the interest of Landlord in the Demised Premises or this Lease.

19.2 Landlord, upon providing Tenant any notice of: (i) Default under this Lease, or (ii) a termination of this Lease, or (iii) a matter on which Landlord may predicate or claim a Default, shall at the same time provide a true copy of such notice to every Permitted Mortgagee which has delivered to Landlord, in the manner provided herein for the giving of notice to Landlord, a true copy of the Permitted Mortgage and notification of the address of the Permitted Mortgagee to which notices shall be sent. At Tenant's request, Landlord shall provide Tenant with a receipt acknowledging receipt of a copy of any Permitted Mortgage and notification of Permitted Mortgagee's address for notice purposes. As between Landlord and any Permitted Mortgagee which has complied with the foregoing delivery requirement, no such notice by Landlord to Tenant shall be deemed to have been duly given unless and until a copy thereof has been provided to the Permitted Mortgagee. From and after such notice has been given to a Permitted Mortgagee, such Permitted Mortgagee shall have the same period, after the giving of such notice upon it, for remedying any Default or acts or omissions which are the subject matter of such notice or causing the same to be remedied, as is given Tenant after the giving of such notice to Tenant to remedy, commence remedying or cause to be remedied the Defaults or acts or omissions that are the subject matter of such notice, i.e., the Permitted Mortgagee's remedy period runs from the giving of notice to the Permitted Mortgagee and thus may run concurrently with Tenant's remedy period. If Tenant or the Permitted Mortgagee fails to remedy the Default, act or omission that is the subject matter of such notice within such cure period, Landlord may, subject to the provisions of **Section 19.5** below, exercise the remedies set forth in this Lease.

19.3 In the event Tenant defaults under any of the provisions of this Lease, each Permitted Mortgagee shall have the right to make good such default whether the same consists of the failure to pay Additional Rent or Additional Charges or the failure to perform any other matter or thing which Tenant is hereby required to do or perform and Landlord shall accept

such performance on the part of the Permitted Mortgagee as though the same had been done or performed by Tenant. In the event any such cure by Permitted Mortgagee requires the Permitted Mortgagee to enter upon the Demised Premises to pursue such cure to completion, Landlord hereby grants Permitted Mortgagee permission to enter upon the Demised Premises for the purposes necessary to complete such cure; provided that such Permitted Mortgagee's entry upon the Demised Premises shall be as Tenant's invitee and shall not diminish or otherwise modify Tenant's obligations under this Lease.

19.4 Any Permitted Mortgagee may at the time of any damage or destruction to the Demised Premises or any machinery, fixtures or equipment therein, by fire or otherwise, at its sole cost and expense, repair the same or construct new Improvements, as the case may be, and in such event, if the Permitted Mortgagee repairs or constructs in accordance herewith, Landlord agrees that Permitted Mortgagee may be subrogated to the rights of Tenant to all insurance proceeds payable as a result of such damage or destruction as provided for in the agreement between Tenant and such Permitted Mortgagee. Notwithstanding the foregoing or anything herein to the contrary, Landlord agrees the name of any Permitted Mortgagee may be added as an additional insured or to the "loss payable endorsement" or named under a standard mortgagee clause of any and all insurance policies carried by Tenant (or a Subtenant, if applicable) and, provided the Permitted Mortgage is prior in lien to any other Permitted Mortgage, the proceeds of any such insurance policies may be held by a bank or title company chosen by such Permitted Mortgagee which is authorized to do business in Arizona and distributed pursuant to the provisions of this Lease except such Permitted Mortgage may reserve the right of such Permitted Mortgagee to apply to the mortgage debt all, or any part, of Tenant's share of such proceeds payable pursuant to Section 14.2.

19.5 In the case of any Default by Tenant, Landlord will take no action to terminate this Lease by reason of any such Default so long as the periods for the Permitted Mortgagee's opportunity to cure Tenant's Defaults as set forth herein have not run. In the event Landlord elects to terminate this Lease, such termination will not become effective if within thirty (30) days of the date of issuance of the termination election to Tenant and the Permitted Mortgagee, the Permitted Mortgagee shall cure all Defaults of Tenant or, if such Default cannot reasonably be cured within thirty (30) days, within a further reasonable period of time, provided the Permitted Mortgagee commences cure within the initial thirty (30) day period and thereafter diligently pursues cure of the Default. In the event any such cure by Permitted Mortgagee requires the Permitted Mortgagee to enter upon the Demised Premises to pursue such cure to completion, Landlord hereby grants Permitted Mortgagee permission to enter upon the Demised Premises for the purposes necessary to complete such cure; provided that such Permitted Mortgagee's entry upon the Demised Premises shall be as Tenant's invitee and shall not diminish or otherwise modify Tenant's obligations under this Lease. Notwithstanding anything contained in this Lease to the contrary, no Default, the cure of which, and no obligation of Tenant, the performance of which, requires possession of the Demised Premises shall be deemed reasonably susceptible of cure or performance by any Permitted Mortgagee not in possession of the Demised Premises, provided such Permitted Mortgagee is, if not enjoined or stayed by a final, non-appealable judicial order or judgment, taking steps to exercise its rights under the preceding sentence or to acquire or sell Tenant's interest in this Lease by foreclosure of the Permitted Mortgage or assignment of this Lease in lieu of foreclosure and prosecuting the same to

completion with reasonable diligence, nor shall any Permitted Mortgagee be required to cure the bankruptcy, insolvency, or any related or similar condition of Tenant.

19.6 Any Permitted Mortgagee or any purchaser of Tenant's leasehold interest at a foreclosure sale may become the legal owner and holder of this Lease by foreclosure of a Permitted Mortgage or as a result of the assignment of this Lease in lieu of foreclosure. Thereafter, such Permitted Mortgagee or purchaser at a foreclosure sale shall immediately thereafter become and remain liable under this Lease to the same extent as Tenant and any and all benefits that would thereafter accrue to Tenant under this Lease shall belong to such Permitted Mortgagee or purchaser, and Landlord hereby agrees to recognize such Permitted Mortgagee as the Tenant under this Lease without the necessity of the execution and delivery of any further instruments on the part of Landlord to effectuate such recognition; provided, however, that Landlord shall execute and deliver such further instrument or instruments evidencing such recognition as may be reasonably requested by such Permitted Mortgagee within thirty (30) days from Landlord's receipt of such request so long as such Permitted Mortgagee has also delivered written notice to Landlord of such foreclosure, purchase or assignment together with reasonable evidence thereof. Any Permitted Mortgagee or purchaser at a foreclosure sale shall be liable under this Lease to Landlord only to the extent of its interest in the Demised Premises.

19.7 Landlord shall upon request of a Permitted Mortgagee execute, acknowledge and deliver to each Permitted Mortgagee an instrument prepared at the sole cost and expense of Tenant, in form satisfactory to such Permitted Mortgagee and Landlord, agreeing to all of the provisions of this **Article 19**. Notwithstanding anything to the contrary in this Lease, any (a) amendment or modification of this Lease; (b) surrender by Tenant of all or any portion of the Demised Premises; (c) termination of this Lease by agreement of Landlord and Tenant; or (d) other cancellation of this Lease by agreement of Landlord and Tenant shall not be binding on a Permitted Mortgagee without such Permitted Mortgagee's prior written consent thereto.

19.8 Any Permitted Mortgagee shall have a right to intervene in and be made a party to any arbitration proceedings or legal proceedings by the parties hereto involving obligations under this Lease, and the parties hereto do hereby consent to such intervention.

19.9 As to any Permitted Mortgage, Landlord consents to a provision therein for an assignment of rents due from subtenants to the holder thereof, effective upon any default under the Permitted Mortgage, and to a provision therein that the holder thereof, in any action to foreclose the same, shall be entitled to the appointment of a receiver.

19.10 Nothing herein contained shall be deemed to impose any obligation on the part of Landlord to deliver physical possession of the Demised Premises to any Permitted Mortgagee, or to its nominee. Landlord agrees, however, that Landlord will, at the sole cost and expense of such Permitted Mortgagee, or its nominee, cooperate in the prosecution of summary proceedings to evict the then defaulting Tenant or subtenant.

19.11 Tenant may delegate irrevocably to the Permitted Mortgagee the authority to exercise any or all of Tenant's rights hereunder, but no such delegation shall be binding upon

Landlord unless and until either Tenant or said Permitted Mortgagee gives to Landlord a true copy of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Permitted Mortgage itself, in which case the service upon Landlord of a true copy of the Permitted Mortgage in accordance with **Article 37**, together with a written notice specifying the provision therein which delegates such authority to said Permitted Mortgagee, shall be sufficient to give Landlord notice of such delegation. The rights set forth in this **Section 19.11** shall not effect, modify or limit the rights of the Permitted Mortgagee contained in this Lease.

19.12 No payment made to Landlord by a Permitted Mortgagee shall constitute agreement that such payment is, in fact, due under the terms of this Lease. A Permitted Mortgagee having made any payment to Landlord pursuant to Landlord's wrongful, improper or mistaken notice of demand shall be entitled to the return of any such payment or the relevant portion thereof.

19.13 Nothing herein contained shall require any Permitted Mortgagee, as a condition to its exercise of its rights hereunder or subsequent to such exercise of its right, to cure any default of Tenant not reasonably susceptible of being cured by such Permitted Mortgagee or subsequent owner of the leasehold interest through foreclosure.

19.14 So long as any Permitted Mortgage is in existence, unless all Permitted Mortgagees shall otherwise consent in writing, the fee title to the Demised Premises and the leasehold estate of Tenant therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of such fee title and such leasehold estate by Landlord or by Tenant or by a third party, by purchase or otherwise.

19.15 If this Lease terminates because of Tenant's default or because of a rejection of this Lease by Tenant in any state or federal insolvency or bankruptcy proceeding, the Permitted Mortgagee may provide Landlord with written notice that this Lease has been terminated and request from Landlord a statement of all uncured defaults (the "**New Lease Notice**"). Upon termination of this Lease, Landlord agrees to enter into a new lease (the "**New Lease**") of the Demised Premises with a Permitted Mortgagee (or such Permitted Mortgagee's designated successor tenant) for the remainder of the Term of this Lease. The New Lease shall be effective simultaneously with the termination of this Lease, at the Additional Rent and upon the terms, covenants and conditions of this Lease; provided that:

(a) The Permitted Mortgagee shall make written request of Landlord and Permitted Mortgagee and Landlord shall enter into the New Lease within thirty (30) days after the date this Lease was terminated.

(b) The Permitted Mortgagee pays to Landlord at the time of execution and delivery of the New Lease all sums then due and in arrears pursuant to this Lease that were listed in the statement of uncured defaults. Additionally, Permitted Mortgagee shall pay to Landlord all reasonable expenses, including reasonable attorneys' fees, which Landlord shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by Landlord.

(c) Subject to the obligations imposed on Permitted Mortgagee in clause (b), above, if a New Lease becomes effective, the Tenant under the New Lease shall be liable to perform the obligations imposed upon such Tenant only during the period such Tenant has ownership of the leasehold estate.

(d) Landlord shall not be deemed to have waived any uncured non-monetary Defaults by virtue of having entered into the New Lease and, to the extent such non-monetary Defaults are reasonably susceptible of being cured by the Permitted Mortgagee, Landlord shall have the right to assert such Defaults under the New Lease.

(e) Any New Lease and any extension of this Lease exercised by a Permitted Mortgagee shall be prior to any mortgage or other lien, charge, or encumbrance on the fee of the Demised Premises.

19.16 Unless the Permitted Mortgagee otherwise directs Landlord in writing, Landlord agrees that upon termination of this Lease it shall not willingly terminate any Subleases in effect at the Demised Premises, such Subleases then being subject to the New Lease.

19.17 If any Permitted Mortgagee to whom Tenant proposes to make a Permitted Mortgage on Tenant's leasehold estate shall require, as a condition to making any loan secured by such Permitted Mortgage, that Landlord agree to amendments of this Lease, including to this **Article 19**, then Landlord expressly agrees that it will not unreasonably disapprove the requested amendment; provided that: (a) the requested amendment does not affect material obligations of Tenant, the Term of this Lease or Landlord's remedies and (b) Tenant pays to Landlord at the time of execution and delivery of the amendment all reasonable expenses, including reasonable attorneys' fees, which Landlord shall have incurred by reason of such amendment. Tenant acknowledges that the provisions concerning City Payments are included in this Lease as the result of the Amended and Restated Development Agreement and that such provisions cannot be amended without prior amendment to the Amended and Restated Development Agreement. If a Permitted Mortgagee requests such an amendment of the Amended and Restated Development Agreement, Landlord will use its good faith reasonable efforts to obtain such an amendment, but excluding therefrom any payment of money to the City (unless Tenant agrees to make such payment).

20. ATTORNMEN

From and after recording of a memorandum of this Lease, no transfer by Landlord or encumbrance of Landlord's interest in the Demised Premises shall be made unless such transfer or encumbrance can be effectuated in a manner which will preserve all rights and benefits conferred on Tenant hereunder; provided, in such event, Tenant shall attorn to Landlord's permitted transferee. Upon any such permitted transfer and the assumption of obligations and liability under this Lease by Landlord's transferee, and upon providing Tenant with a copy of such assignment and assumption agreement, Landlord shall be and is hereby entirely freed and released of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act or omission related to this Lease occurring from and after the consummation of such transfer. Such transfer shall not release Landlord from liability under any and all of its covenants and obligations contained in or derived

from this Lease arising out of any act or omission related to this Lease occurring prior to the consummation of such transfer. Without limitation on the foregoing, Landlord shall not have the right to transfer its interest in the Demised Premises to any entity that is not the State of Arizona or a political subdivision thereof that is exempt from *ad valorem* property taxation.

21. ESTOPPEL CERTIFICATE.

21.1 Upon receipt of a written request from the other, Landlord and Tenant shall each, from time to time, and within twenty (20) days from receipt of such request, execute, acknowledge and deliver a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified, is in full force and effect) and the dates to which the Additional Rent and Additional Charges are paid in advance, if any, (ii) acknowledging that there are not, to its knowledge, any uncured defaults on the part of the other hereunder, or specifying such defaults if any are claimed, and (iii) if requested, certifying the particulars of material terms of this Lease, e.g., the Effective Date, (when applicable) that the Minimum Construction Failure did not occur, identification and date of any amendments or modifications to Lease or Project Site Plan; status of option to extend Lease Term; and the current amount of Additional Rent and Additional Charges payable under this Lease. Any such statement may be relied upon by a prospective purchaser or existing or prospective encumbrancer of all or any portion of an estate in the Demised Premises.

21.2 Upon receipt of a written request from any assignee or subtenant obligated to pay all or any portion of the Lessee Payments, City Payments and Equivalent Amounts pursuant to Sections 6.3, 6.4 and 6.5, or from the Permitted Mortgagee of any such assignee or subtenant, Landlord shall, from time to time, and within twenty (20) days from receipt of such request, execute, acknowledge and deliver a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified, is in full force and effect) and the dates to which the Additional Rent and Additional Charges in respect of all or the applicable portion of the Demised Premises are paid in advance, if any, (ii) acknowledging that there are not, to its knowledge, any uncured defaults on the part of Tenant hereunder or of such assignee or subtenant under Sections 6.3, 6.4 and 6.5, or specifying such defaults if any are claimed, and, and (iii) if requested, certifying the particulars of material terms of this Lease, e.g., the Effective Date, confirmation (when applicable) that the Minimum Construction Failure did not occur, identification and date of any amendments or modifications to Lease or Project Site Plan; status of option to extend Lease Term; and the current amount of Additional Rent and Additional Charges payable under this Lease. Any such statement may be relied upon by a prospective purchaser or encumbrancer of the interest of such subtenant or assignee in the Demised Premises.

21.3 If the non-requesting party fails to deliver such statement within the 20-day period set forth in Section 21.1, and such failure continues for ten (10) days after a second request is delivered by the requesting party in accordance with Section 21.1, such failure shall be conclusive (i) that this Lease is in full force and effect, without modification except as may be represented by the party requesting the certificate, (ii) that there are no uncured defaults in

performance by the party requesting the certificate, and (iii) that all Additional Rent and Additional Charges (and, if applicable, City Payments and Equivalent Amounts) have been paid.

22. CONFLICT OF LAWS.

This Lease shall be governed by and construed pursuant to the laws of the State of Arizona without giving effect to conflicts of law principles and it is agreed that the venue of any legal suit or action for enforcement of any obligation contained herein shall be Maricopa County, Arizona. This Lease shall not be construed either for or against Landlord or Tenant, but rather shall be interpreted in accordance with the general terms of the language in an effort to reach an equitable result.

23. STATUS OF TENANT.

Tenant covenants, warrants and represents to Landlord that Tenant is a valid and existing limited liability company under the laws of the State of Delaware, that Tenant is, and will continue throughout the Term to be, registered to conduct business in Arizona, and that Tenant has full right and authority to enter into and perform its obligations under this Lease.

24. SUCCESSORS AND ASSIGNS.

All of the covenants, conditions and provision of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns, subject to **Article 18**.

25. ATTORNEYS' FEES.

If either party hereto shall bring suit upon this Lease, the prevailing party shall be entitled to recover from the other party all costs, expenses and attorneys' fees incurred in connection with the exercise by the prevailing party of its rights and remedies hereunder. For the purposes of this Section, the term "prevailing party" shall mean, in the case of the claimant, one who is successful in obtaining substantially all of the relief sought, and in the case of the defendant or respondent, one who is successful in denying substantially all of the relief sought by the claimant.

26. PERFORMANCE BY TENANT.

All covenants to be performed by Tenant shall be performed at Tenant's sole cost and expense and without any abatement of Additional Rent or Additional Charges. If Tenant shall fail to pay any sum of money required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, and such failure shall constitute a Default under this Lease, Landlord may, without releasing Tenant from any obligations, but shall not be obligated to, make any such payment or perform any such other act on Tenant's part to be made or performed. All sums so paid by Landlord and all necessary incidental costs, shall bear interest thereon at the Default Rate from the date of such payment by Landlord or the applicable due date for payment of Additional Charges until paid and shall be payable to Landlord within thirty (30) days after demand.

27. WAIVER.

No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed; provided, however, that acceptance by Landlord of any performance by Tenant after the time the same shall have become due shall constitute a waiver by Landlord of the applicable breach or default of any covenant, term or condition, and such breach or default shall automatically be deemed cured by Tenant. Notwithstanding the foregoing, no waiver of a breach or default of any covenant, term or condition shall be deemed to be a waiver of any subsequent breach or default of any covenant, term or condition.

28. LAND AND IMPROVEMENTS LEASE.

28.1 This Lease is intended to constitute a "Land and Improvements Lease" pursuant to the Amended and Restated Development Agreement. Pursuant to the Amended and Restated Development Agreement, on the date that is one (1) year after the First C of O Date for each Phase, the following additional terms and conditions shall become effective for such Phase:

(a) In addition to and at the same time as the Lessee Payments, Tenant shall make an annual rental payment to Landlord in an amount equal to One Dollar (\$1.00) per year;

(b) The uses of the Demised Premises shall be limited to the use permitted by the PAD (as defined in the Amended and Restated Development Agreement) for the Demised Premises; provided, however, that Tenant shall have the right to make alterations or modifications thereto from time to time as determined to be necessary or desirable in the reasonable discretion of Tenant; and

(c) The provisions of Section 6.3 and Section 6.4 shall apply.

28.2 Notwithstanding anything contained in this Lease to the contrary, if, for any reason during the Term, the Demised Premises, inclusive of the Improvements, become subject to the payment of *ad valorem* property taxes as a result of a change in the law, or any final, non-appealable unsuccessful judicial challenge of a levy (or attempted levy) of *ad valorem* taxes or assessments under Section 28.5, or for any other reason (each a "Trigger Event"), then within one hundred eighty (180) days after obtaining the foregoing knowledge:

(a) Provided that ABOR has approved the conveyance of fee title to the Demised Premises to the City, Landlord and Tenant shall request in writing during the 180-day period that the City execute and deliver such documents and instruments as may be necessary in order to effect a government property lease pursuant to the provisions of A.R.S. § 42-6201 through §42-6210 (a "GPLET Lease") for the purpose of enabling Tenant to realize the benefit of the remainder of any eight (8) year abatement of taxes as provided pursuant to the provisions of A.R.S. § 42-6201, *et seq.*, and the benefit of the application of the applicable excise tax rate as set forth in A.R.S. § 42-6203 for the ninth (9th) through the fifteenth (15th) years of the term of such GPLET Lease; provided, in such event, concurrent with the expiration of any such GPLET Lease and notwithstanding anything contained in the Amended and Restated Development Agreement or the GPLET Lease to the contrary, the Demised Premises (inclusive

of the Improvements) shall be reconveyed to Landlord (and the parties agree to take such actions as may be necessary to cause such reconveyance to occur), but Tenant may elect by written notice to Landlord not later than ten (10) Business Days prior to expiration of such GPLET Lease to acquire the Improvements concurrent with such expiration and reconveyance to Landlord, and if Tenant makes such election, Landlord shall quit-claim the Improvements to Tenant by delivery to Escrow Agent of (A) a duly executed quit claim deed, bill of sale or other instruments (without representation or warranty by Landlord) quit-claiming the Improvements (but not the Land) subject to all title matters affecting the Improvements as of the date of such notice including, but not limited to, the Memorandum of Lease, (B) an Affidavit of Value in the form and if required by law, and (C) such other documents reasonably required to consummate such vest fee title to the Improvements in Tenant (collectively, "**Landlord Closing Deliveries**"), which Escrow Agent shall record and deliver (as applicable), and Tenant shall pay all fees and costs associated with such conveyance and the escrow; or

(b) If Landlord is unable to obtain approval from ABOR for conveyance of fee title to the Demised Premises to the City or Landlord and Tenant are unable to obtain any necessary City deliveries as provided in the preceding clause (a) or if such change in the law or unsuccessful challenge of a levy (or attempted levy) either occurs after the period during which Tenant would be able to realize the abatement or application of the applicable excise tax rate pursuant to the provisions of A.R.S. § 42-6201 through § 42-6210 or results in such abatement and application not providing comparable treatment to that contemplated by the parties under this Lease, Tenant may elect by written notice to Landlord within one hundred eighty (180) days after obtaining such knowledge to acquire the Improvements, whereupon, as promptly as reasonably possible and not later than thirty (30) days following Landlord's receipt of such notice, Landlord shall quit claim the Improvements to Tenant by delivery to Escrow Agent of the Landlord Closing Deliveries, which Escrow Agent shall record and deliver (as applicable), and Tenant shall pay all fees and costs associated with such conveyance and the escrow.

28.3 In all events, upon a Trigger Event and consistent with Section 3.2 of the Amended and Restated Development Agreement, all obligations of Tenant for payment of the Lessee Payments and City Payments shall automatically terminate and be of no further force or effect since the Tenant will be required to pay *ad valorem* property taxes or payments in lieu thereof following the occurrence of the Trigger Event pursuant to the terms of this Lease. However, and in accordance with Section 3.1(d) of the Amended and Restated Development Agreement, Tenant shall continue to make City Payments during the term of any City Improvement Lease.

28.4 During the term of any GPLET Lease or any City Improvement Lease, Tenant's right to possession shall be granted pursuant to such GPLET Lease or City Improvement Lease, and the corresponding provisions of this Lease during the term thereof shall be of no force and effect, but all other provisions of this Lease (as modified by this **Section 28**) shall remain in effect. This Lease, including the provisions relating to possession, shall continue in effect following the expiration of the term of or earlier termination of the GPLET Lease or any City Improvement Lease.

28.5 Landlord and Tenant desire and intend that the Demised Premises, including the Improvements comprising any Phase, will be exempt from *ad valorem* taxes and assessments or any payments in lieu thereof (other than as provided in this Lease). Landlord and Tenant will cooperate in good faith to ensure that any applicable exemptions are at all times in effect with respect to the Demised Premises, including the Improvements. Landlord and Tenant hereby covenant and agree not to take any affirmative action for the purpose of causing, or with the intent to cause, the Demised Premises, inclusive of the Improvements comprising any Phase, to become subject to assessment for or any obligation to pay *ad valorem* property taxes and assessments or any payments in lieu thereof (other than as provided in this Lease). If any such taxes or any payments in lieu thereof (other than as provided in this Lease) are levied (or levy is attempted) against the Demised Premises or any portion thereof, including the Improvements, then Landlord, in its own name and in the name of Tenant (or if Landlord does not have standing, then in the name of Tenant alone) at Landlord's sole cost and expenses, shall use its good faith efforts to judicially challenge (including seeking any available appeal rights), such levy (or attempted levy) within the applicable time frame provided pursuant to applicable Legal Requirements. Tenant will cooperate with Landlord in good faith and shall have the right to participate to challenge or defend against such taxes or assessments or any payments in lieu thereof (other than as provided in this Lease). If, despite its good faith efforts to attempt to challenge or defend the levy of *ad valorem* property taxes and assessments or any payments in lieu thereof (other than as provided in this Lease), such *ad valorem* taxes and assessments or any payments in lieu thereof (other than as provided in this Lease) are levied against the Demised Premises, including the Improvements, or against Tenant's leasehold interest therein, Tenant shall thereafter be responsible for the payment of such *ad valorem* property taxes and assessments or any payments in lieu thereof and the provisions of **Section 28.2** shall apply; provided, however, nothing herein shall be construed to preclude or restrict Tenant's right to contest the amount of any such taxes or assessments pursuant to **Section 6.6(d)**.

29. **FORCE MAJEURE.**

If either party hereto shall be delayed or prevented from the exercise of any right or the performance of any obligation of such party under this Lease by reason of (a) acts of God, (b) strikes, (c) work stoppages, (d) unavailability of or delay in receiving labor or materials, (e) defaults by contractors or subcontractors, (f) weather conditions, (g) governmental moratoria on building permits or other approvals required for compliance with such deadline, (h) delays caused by the City for reasons (1) that do not relate to failure of any party to meet any requirement or provide any information to the City and (2) that otherwise are not within the control of any party, or other person acting on behalf of such party, (i) fire or other Casualty Event, (j) delays caused by acts of war or domestic terrorism, or (k) other cause without fault and beyond the control of the party obligated (financial inability excepted) (collectively, the "**Force Majeure Events**"), timely exercise of such right or performance of such act shall be excused for the period of the delay or one (1) year, whichever is shorter, and the period for the exercise of such right or performance of any such obligation shall be extended for a period equivalent to the period of such delay or one (1) year, whichever is shorter, provided that if any Force Majeure Event occurs, the affected party must give written notice to the other party within thirty (30) days of the occurrence of the event, such notice to describe the event, estimate the anticipated duration and describe the party's plans for dealing with the event, and the affected party shall use

commercially reasonable efforts to minimize the impact of the event. Lack of financial capacity shall not be a Force Majeure Event.

30. AMENDMENTS.

No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.

31. RECORDING.

Promptly following execution of this Lease, Landlord and Tenant shall execute, acknowledge and record a Memorandum of Lease in the form attached hereto as **Exhibit C**. Upon the expiration or earlier termination of this Lease, Landlord and Tenant shall execute, acknowledge and record an instrument indicating that this Lease has expired or been terminated.

32. LIMITATION ON LIABILITY.

32.1 No officer, official, employee, agent or representative of Tenant shall be personally liable to Landlord or any successor in interest in the event of any default or breach by Tenant for any amount which may become due to Landlord or its successors in interest or on any obligation incurred under the terms of this Lease. In consideration of the benefits accruing hereunder, Landlord, for itself and all successors and assigns, covenants and agrees that, in the event of any actual or alleged failure, breach or Default hereunder by Tenant, Landlord shall not have recourse against any of the assets of Tenant except Tenant's leasehold estate in the Demised Premises.

32.2 No regent, officer, official, employee, agent or representative of Landlord shall be personally liable to Tenant or any successor in interest, in the event of any default or breach by Landlord for any amount which may become due to Tenant or any successor in interest, or on any obligation incurred under the terms of this Lease. In consideration of the benefits accruing hereunder, Tenant, for itself and all successors and assigns, covenants and agrees that, in the event of any actual or alleged failure, breach or default hereunder by Landlord, Tenant shall not have recourse against any of the assets of Landlord except Landlord's estate in the Tenant Project.

33. NONSUBORDINATED LEASE.

This is a nonsubordinated lease. Landlord shall not be obligated to subordinate its rights in the Demised Premises to any loan or money encumbrance that Tenant shall place against Tenant's leasehold estate in the Demised Premises.

34. CONSENT OF LANDLORD AND TENANT.

In the event of the failure of Landlord or Tenant to give any consent or approval required herein, if it is either provided herein or held to be that any such consent or approval shall not be unreasonably withheld or delayed, the requesting party shall be entitled to seek specific performance at law and shall have such other remedies as are reserved to it under this

Lease, but in no event shall Landlord or Tenant be responsible for damages to anyone for such failure to give consent or approval.

35. SURRENDER; HOLDING OVER.

35.1 Upon the expiration or other termination of the Term, Tenant shall quit and surrender to Landlord the Demised Premises, together with all Improvements, buildings, replacements, changes, additions and other improvements thereon, with all non-trade fixtures and equipment in or appurtenant thereto in the condition required under **Article 9** (unless otherwise agreed to in writing by Landlord and Tenant), reasonable wear and tear and loss by casualty and condemnation excepted. Following expiration or other termination of this Lease, Tenant's leasehold interest in the Improvements shall cease and Tenant shall have no further right to use or occupy the Improvements.

35.2 If Tenant or any successor in interest to Tenant should remain in possession of the Demised Premises after expiration of the Term or earlier termination of this Lease without executing a new lease, then such holding over shall be construed as a tenancy from month-to-month, subject to all the covenants, terms, provisions and obligations of this Lease. Nothing contained herein shall be construed as Landlord permission for Tenant to hold over or as limiting Landlord's remedies against a holdover tenant.

36. QUIET POSSESSION.

Landlord agrees that Tenant, upon paying the Additional Rent and Additional Charges and performing all other covenants and conditions of this Lease in all material respects, may quietly have, hold and enjoy the Demised Premises during the Term hereof, subject to all matters of record and without hindrance by Landlord or any person claiming the by, through or under Landlord. It is further the intention of the parties hereto that the covenants of this Lease be independent of each other.

37. NOTICES.

Notices may be delivered either by private messenger service (including overnight courier) or by United States mail, postage pre-paid, registered or certified mail, return receipt requested, addressed as provided below. Any notice or document required or permitted hereunder shall be in writing and shall be deemed to be given on the date received; provided, however, that all notices and documents mailed in the United States Mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the respective address show below, shall be deemed to have been received three (3) Business Days after mailing. Any obligation of Landlord to provide notice to any Permitted Mortgagee is subject to Landlord having received written notice in accordance with this Section of such Permitted Mortgagee's address. Any notice of Default or of an event or occurrence that, with the giving of such notice, the passage of time, or both, would constitute a Default shall, in order to be effective, contain the following caption conspicuously at the top of the first page of such notice in bold faced, all capitalized, underlined text: "**THIS IS A NOTICE OF DEFAULT OR POTENTIAL DEFAULT BY [NAME OF TENANT] UNDER THE MARINA HEIGHTS LEASE.**" Each address shall for all purposes be as set forth below unless otherwise changed by notice to the other parties as provided herein:

To Landlord:

Arizona State University
Attn: Assistant Vice-President, University
Real Estate Development
80 E. Rio Salado Parkway, Suite 513
Tempe, AZ 85281-9106

For mail delivery at:

P. O. Box 873908
Tempe, AZ 85287-3908

With a mandatory copy to:

Arizona State University
Attn: Vice President for University Administration and
Legal Affairs
300 E. University Drive, Suite 335
Tempe, AZ 85287-7505

For mail delivery at:

P. O. Box 877405
Tempe, AZ 85787-7405

To Tenant:

c/o State Farm Insurance Companies
Attn: John Higgins
One State Farm Plaza, E-7
Bloomington, IL 61710

S/R Marina Heights, LLC
Attn: Sean Walters
6720 N. Scottsdale Rd., Suite 160
Scottsdale, AZ 85253

With a mandatory copy to:

c/o State Farm Insurance Companies
Attn: Christiane M. Stoffer, Esq.
One State Farm Plaza, A-3
Bloomington, Illinois 61710

Andrew D. Schorr, Esq.
Lewis and Roca LLP
One South Church Avenue, Suite 700
Tucson, Arizona 85701

Lesla Storey, Esq.
Greenberg Traurig, LLP
2375 E. Camelback Rd., Suite 700
Phoenix, AZ 85016

38. NET LEASE.

It is the intention of the parties hereto that, except as otherwise provided in this Lease, this Lease shall be a net lease and that Landlord shall receive the Additional Rent and Additional Charges herein reserved and all sums which shall or may become payable hereunder by Tenant free from all taxes, charges and expenses of every kind or sort whatsoever and that Tenant shall and will and hereby expressly agrees to pay all such sums which, except for the execution and delivery of this Lease, would have been chargeable against the Demised Premises and payable by Landlord.

39. LANDLORD'S INSURANCE.

Under A.R.S. §41-621 *et seq.*, Landlord insurance coverages are currently provided by the Risk Management Division, Department of Administration, State of Arizona ("**State Risk Management Division**"). During the Term of this Lease, Landlord shall maintain insurance coverages (i) for general liability in the minimum amount of Five Million Dollars (\$5,000,000) per occurrence, and (ii) for workers' compensation. Landlord may maintain any and all insurance coverages through the State Risk Management Division self-insurance program. Landlord's liability insurance coverage shall be primary and not contributing with respect of any insurance maintained by Tenant. Landlord's insurance coverages shall be on the basis that coverage will not be invalidated due to any act or omission of Tenant or its directors, officers or employees. Landlord will deliver to Tenant a certificate of insurance showing such insurance coverages. The liability coverages will cover and will be limited to acts and omissions of Landlord Insurance Parties occurring on the Demised Premises. "**Landlord Insurance Parties**" means the following and only the following: Landlord and Landlord regents, officers, employees, and agents.

40. BROKERAGE.

Landlord warrants that Landlord has not dealt with any broker in connection with this transaction. Tenant warrants that Tenant has not dealt with any broker in connection with this transaction.

41. ALTERNATIVE DISPUTE RESOLUTION.

Disputes arising under this Lease shall be subject to the dispute resolution provisions set forth on **Exhibit E**.

42. GENERAL PROVISIONS.

42.1 Compliance With Applicable Law. To the extent applicable, the parties agree to comply with all state and federal laws, rules, regulations and executive orders governing equal employment opportunity, non-discrimination, immigration and affirmative action.

42.2 Notice. Notice is hereby given of A.R.S. §§12-133, 12-1518 and 35-214.

42.3 Appropriations. If Landlord's performance under this Lease depends upon the appropriation of funds by the State Legislature of Arizona (the "**Legislature**"), and if the

Legislature fails to appropriate an amount necessary for performance by Landlord (the “**Non-Appropriated Fund Amount**”), then Landlord may provide written notice to Tenant of such failure to appropriate. In such case, Landlord shall not be in default hereunder, but Tenant may offset any amount payable to Landlord under this Lease to pay the Non-Appropriated Fund Amount.

42.4 Counterparts. This Lease may be executed in any number of counterparts, each of which will be an original but all of which will constitute one and the same instrument. Signature and acknowledgment pages may be detached from individual counterparts and attached to a single or multiple original(s) in order to form a single or multiple original(s) of this document.

42.5 No Partnership. This Lease is not intended to be, and shall not be construed as, a joint venture, partnership or other business entity created by or between the parties, and neither party is an agent for the other for any purpose nor has the power to bind the other for any purpose.

42.6 Severability. If any phrase, clause, sentence, paragraph, section, article or other portion of this Lease shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Lease shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law.

42.7 Headings. The headings of the Articles and Sections in this Lease are for convenience of location reference only and are not intended to, and shall not, be used in the interpretation of the text therein or be deemed to limit, expand, amend, modify, define or otherwise affect the text therein. Any number, gender or pronoun used in this Lease shall mean any other number, gender or pronoun where the context clearly requires such interpretation.

42.8 Time of the Essence. Time is of the essence with respect to each provision of this Lease. The language in all parts of this Lease shall in all cases be construed as a whole and simply according to its fair meaning and not strictly for nor against any of the parties, and the construction of this Lease and any of its various provisions shall be unaffected by any claims, whether or not justified, that it has been prepared, wholly or in substantial part, by or on behalf of either of the parties. “**Including**” means “including but not limited to.” “**Include**” means “include but not limited to.” “**Any**” means “any and all.” Except to the extent context requires otherwise, “**may**” means “may but shall not be obligated to.” “**At any time**” means “at any time and from time to time.”

42.9 Transaction Documents. This Lease, the Amended and Restated Development Agreement, any applicable Partial Assignment and Assumption of the Amended and Restated Development Agreement applicable to the Demised Premises, the Project Site Plan and the other agreements, documents and exhibits referred to or otherwise contemplated therein (the “**Transaction Documents**”), shall constitute the entire agreement among the parties, and there are no collateral understandings, representations, or agreements other than those contained or incorporated by reference herein or therein or added by written instrument duly executed by the parties. Without limitation on the foregoing, the Amended and Restated Agreement is not

one of the Transaction Documents, and Tenant has no obligations or liability thereunder. Any conflict between this Lease and any of the other Transaction Documents shall be resolved in favor of this Lease. This Lease and the other Transaction Documents shall supersede any and all other understandings and agreements, and no oral representations or statements shall be considered a part hereof. No party shall be liable or bound to the other in any manner by any representations, covenants, warranties or indemnities, except as specifically set forth in the Transaction Documents.

42.10 Conflict of Interest. Landlord's participation in this Lease is subject to A.R.S. § 38-511 which provides that this Lease may be cancelled if any person significantly involved in initiating, negotiating, securing, drafting or creating this Lease on behalf of Landlord is, at any time while this Lease or any extension thereof is in effect, an employee or agent of the other party to this Lease in any capacity or a consultant to any party with respect to the subject matter of this Lease.

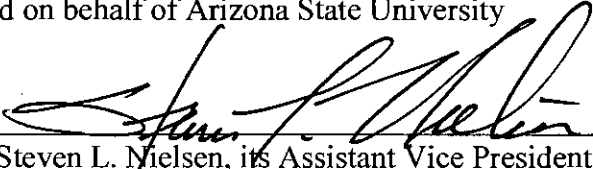
42.11 Weapons, Explosive Devices and Fireworks. Landlord prohibits the use, possession, display or storage of any weapon, explosive device or fireworks on all land and buildings owned, leased, or under the control of Landlord or its affiliated or related entities, in all Landlord residential facilities (whether managed by Landlord or another entity), in all Landlord vehicles, and at all University or University affiliate sponsored events and activities, except as provided in A.R.S. § 12-781 or unless written permission is given by the ASU Police Department (ASU PD). Landlord may provide notices of this policy, in poster or other printed form, which notices shall be posted on the Demised Premises in locations approved by Landlord and Tenant, which locations shall be reasonably visible to persons entering the Demised Premises including employees, contractors, subcontractors, consultants, invitees or licensees of Tenant who enter the Demised Premises. Landlord's policy may be accessed through the following web page: <http://www.asu.edu/aad/manuals/pdp/pdp201-05.html>

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written to be effective as of the Effective Date.

LANDLORD:

ARIZONA BOARD OF REGENTS, a body corporate,
for and on behalf of Arizona State University

By: 
Steven L. Nielsen, its Assistant Vice President,
University Real Estate Development

TENANT:

S/R MARINA HEIGHTS LLC, a Delaware limited liability
company

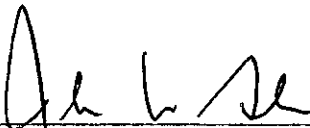
By: 
John W. Graham, its Authorized Representative

EXHIBIT A-1

**LEGAL DESCRIPTION
OF THE DEMISED PREMISES**

PARCEL NO. 1:

A PORTION OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 1 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND MARICOPA COUNTY DEPARTMENT OF ENGINEERS BRASS CAP IN HAND HOLE AT THE EAST QUARTER CORNER OF SAID SECTION 15, FROM WHICH A FOUND REBAR WITH L.S. TAG NUMBER 15089 AT THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 15 BEARS SOUTH 89 DEGREES 17 MINUTES 38 SECONDS WEST, A DISTANCE OF 2646.98 FEET;

THENCE SOUTH 89 DEGREES 17 MINUTES 38 SECONDS WEST, ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 15, A DISTANCE OF 1819.67 FEET;

THENCE DEPARTING FROM SAID SOUTH LINE, NORTH 00 DEGREES 09 MINUTES 48 SECONDS EAST, A DISTANCE OF 95.59 FEET TO A POINT ON THE NORTHERLY LINE OF AN EASEMENT RECORDED IN DOCUMENT NO. 2002-1019659, MARICOPA COUNTY RECORDS, SAID POINT BEING ON A CURVE, FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH 06 DEGREES 48 MINUTES 07 SECONDS WEST, A DISTANCE OF 662.00 FEET, SAID POINT ALSO BEING A POINT ON THE COMMON LINE FOR ASU PARCELS 3A AND 3B AND THE POINT OF BEGINNING;

THENCE ALONG THE NORTHERLY LINE OF SAID EASEMENT, THE FOLLOWING FIVE COURSES;

WESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 88.18 FEET THROUGH A CENTRAL ANGLE OF 07 DEGREES 37 MINUTES 56 SECONDS;

THENCE SOUTH 89 DEGREES 10 MINUTES 11 SECONDS WEST, A DISTANCE OF 179.35 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 532.00 FEET;

THENCE ALONG THE ARC OF SAID CURVE, A DISTANCE OF 383.78 FEET THROUGH A CENTRAL ANGLE OF 41 DEGREES 19 MINUTES 57 SECONDS;

THENCE NORTH 49 DEGREES 29 MINUTES 52 SECONDS WEST, A DISTANCE OF 179.55 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 715.00 FEET;

THENCE ALONG THE ARC OF SAID CURVE, A DISTANCE OF 86.45 FEET THROUGH A CENTRAL ANGLE OF 6 DEGREES 55 MINUTES 40 SECONDS TO A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF THE AFOREMENTIONED SECTION 15, FROM WHICH THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER BEARS SOUTH 00 DEGREES 12 MINUTES 15 SECONDS WEST, A DISTANCE OF 403.83 FEET;

THENCE DEPARTING FROM SAID EASEMENT LINE, NORTH 00 DEGREES 12 MINUTES 15 SECONDS EAST ALONG THE WEST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 459.63 FEET TO THE SOUTH LINE OF A FLOOD CONTROL MAINTENANCE EASEMENT RECORDED IN BOOK 365 OF MAPS, PAGE 34, MARICOPA COUNTY RECORDS, SAID POINT BEING ON A CURVE, FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH 12 DEGREES 32 MINUTES 39 SECONDS WEST, A DISTANCE OF 2865.40 FEET;

THENCE ALONG THE EASEMENT LINE, THE FOLLOWING THREE COURSES;

SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 543.52 FEET THROUGH A CENTRAL ANGLE OF 10 DEGREES 52 MINUTES 05 SECONDS;

THENCE SOUTH 66 DEGREES 35 MINUTES 16 SECONDS EAST, A DISTANCE OF 220.40 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 5165.75 FEET;

THENCE ALONG THE ARC OF SAID CURVE, A DISTANCE OF 181.50 FEET THROUGH A CENTRAL ANGLE OF 02 DEGREES 00 MINUTES 47 SECONDS TO THE AFOREMENTIONED COMMON LINE FOR ASU PARCELS 3A AND 3B;

THENCE ALONG SAID COMMON LINE, SOUTH 15 DEGREES 09 MINUTES 51 SECONDS WEST, A DISTANCE OF 234.00 FEET;

THENCE CONTINUING ALONG SAID COMMON LINE, SOUTH 00 DEGREES 09 MINUTES 48 SECONDS WEST, A DISTANCE OF 207.57 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 462,746 SQUARE FEET OR 10.623 NET ACRES, MORE OR LESS.

PARCEL NO. 2:

A PARCEL OF LAND SITUATED IN THE EAST HALF OF SECTION 15, TOWNSHIP 1 NORTH, RANGE 4 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 15, FROM WHICH THE CENTER OF SAID SECTION 15 BEARS SOUTH 89 DEGREES 17 MINUTES 38 SECONDS WEST, A DISTANCE OF 2647.00 FEET;

THENCE SOUTH 89 DEGREES 17 MINUTES 38 SECONDS WEST, ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 15, A DISTANCE OF 864.10 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED;

THENCE SOUTH 00 DEGREES 32 MINUTES 24 SECONDS EAST, A DISTANCE OF 150.75 FEET TO THE POINT OF CURVATURE OF A NON TANGENT CURVE TO THE RIGHT, OF WHICH THE RADIUS POINT BEARS NORTH 04 DEGREES 11 MINUTES 50 SECONDS WEST, A RADIAL DISTANCE OF 1,230.00 FEET;

THENCE WESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 28 DEGREES 25 MINUTES 24 SECONDS, A DISTANCE OF 610.18 FEET;

THENCE NORTH 65 DEGREES 46 MINUTES 24 SECONDS WEST, CONTINUING ALONG SAID NORTHERLY RIGHT OF WAY OF RIO SALADO PARKWAY, A DISTANCE OF 184.97 FEET TO THE POINT OF CURVATURE TO THE LEFT HAVING A RADIUS OF 662.00 FEET;

THENCE WESTERLY CONTINUING ALONG SAID NORTHERLY RIGHT OF WAY OF RIO SALADO PARKWAY AND ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 17 DEGREES 25 MINUTES 26 SECONDS, A DISTANCE OF 201.32 FEET TO THE COMMON LINE FOR ASU PARCELS 3A AND 3B;

THENCE NORTH 00 DEGREES 09 MINUTES 48 SECONDS EAST, DEPARTING SAID NORTHERLY RIGHT OF WAY OF RIO SALADO PARKWAY AND ALONG SAID COMMON LINE FOR ASU PARCELS 3A AND 3B, A DISTANCE OF 207.57 FEET;

THENCE NORTH 15 DEGREES 09 MINUTES 51 SECONDS EAST, CONTINUING ALONG SAID COMMON LINE FOR ASU PARCELS 3A AND 3B, A DISTANCE OF 234.02 FEET TO THE SOUTHERLY LINE OF A FLOOD CONTROL MAINTENANCE EASEMENT RECORDED IN BOOK 365 OF MAPS, PAGE 34, RECORDS OF

MARICOPA COUNTY, ARIZONA AND THE POINT OF CURVATURE OF A NON TANGENT CURVE TO THE LEFT, OF WHICH THE RADIUS POINT BEARS NORTH 21 DEGREES 23 MINUTES 58 SECONDS EAST, A RADIAL DISTANCE OF 5,165.75 FEET;

THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID FLOOD CONTROL MAINTENANCE EASEMENT AND ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 10 DEGREES 27 MINUTES 54 SECONDS, A DISTANCE OF 943.51 FEET;

THENCE SOUTH 10 DEGREES 56 MINUTES 05 SECONDS WEST, DEPARTING THE SOUTHERLY LINE OF SAID FLOOD CONTROL MAINTENANCE EASEMENT, A DISTANCE OF 69.94 FEET;

THENCE SOUTH 00 DEGREES 32 MINUTES 24 SECONDS EAST, A DISTANCE OF 186.26 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED.

SAID PARCEL CONTAINS 420,756 SQUARE FEET OR 9.659 NET ACRES, MORE OR LESS.

EXHIBIT A-2

**LEGAL DESCRIPTION
OF THE EAST ASU PARCEL**

A PARCEL OF LAND SITUATED IN THE EAST HALF OF SECTION 15, TOWNSHIP 1 NORTH, RANGE 4 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 15, FROM WHICH THE CENTER OF SAID SECTION 15 BEARS SOUTH 89 DEGREES 17 MINUTES 38 SECONDS WEST, A DISTANCE OF 2647.00 FEET;

THENCE SOUTH 89 DEGREES 17 MINUTES 38 SECONDS WEST, ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 15, A DISTANCE OF 90.01 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY OF RURAL ROAD AND THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED;

THENCE SOUTH 00 DEGREES 08 MINUTES 02 SECONDS WEST, ALONG SAID WESTERLY RIGHT OF WAY OF RURAL ROAD, A DISTANCE OF 115.07 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY OF RIO SALADO PARKWAY;

THENCE NORTH 85 DEGREES 51 MINUTES 36 SECONDS WEST, ALONG SAID NORTHERLY RIGHT OF WAY OF RIO SALADO PARKWAY, A DISTANCE OF 210.23 FEET TO A POINT OF CURVATURE TO THE LEFT HAVING A RADIUS OF 1,065.00 FEET;

THENCE WESTERLY CONTINUING ALONG SAID NORTHERLY RIGHT OF WAY OF RIO SALADO PARKWAY AND THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 14 DEGREES 15 MINUTES 01 SECONDS, A DISTANCE OF 264.88 FEET;

THENCE SOUTH 79 DEGREES 53 MINUTES 24 SECONDS WEST, CONTINUING ALONG SAID NORTHERLY RIGHT OF WAY OF RIO SALADO PARKWAY A DISTANCE OF 175.66 FEET TO A POINT OF CURVATURE TO THE RIGHT HAVING A RADIUS OF 1,230.00 FEET;

THENCE WESTERLY CONTINUING ALONG SAID NORTHERLY RIGHT OF WAY OF RIO SALADO PARKWAY AND ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 05 DEGREES 54 MINUTES 46 SECONDS, A DISTANCE OF 126.93 FEET;

THENCE NORTH 00 DEGREES 32 MINUTES 24 SECONDS WEST, DEPARTING SAID NORTHERLY RIGHT OF WAY OF RIO SALADO PARKWAY, A DISTANCE OF 337.01 FEET;

THENCE NORTH 10 DEGREES 56 MINUTES 05 SECONDS EAST, A DISTANCE OF 69.94 FEET TO THE SOUTHERLY LINE OF A FLOOD CONTROL MAINTENANCE EASEMENT RECORDED IN BOOK 365 OF MAPS, PAGE 34, RECORDS OF MARICOPA COUNTY, ARIZONA AND THE POINT OF CURVATURE OF A NON TANGENT CURVE TO THE LEFT, OF WHICH THE RADIUS POINT BEARS NORTH 10 DEGREES 56 MINUTES 05 SECONDS EAST, A RADIAL DISTANCE OF 5,165.75 FEET;

THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID FLOOD CONTROL MAINTENANCE EASEMENT AND ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 08 DEGREES 31 MINUTES 37 SECONDS, A DISTANCE OF 768.79 FEET TO A POINT ON SAID WESTERLY RIGHT OF WAY OF RURAL ROAD;

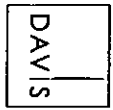
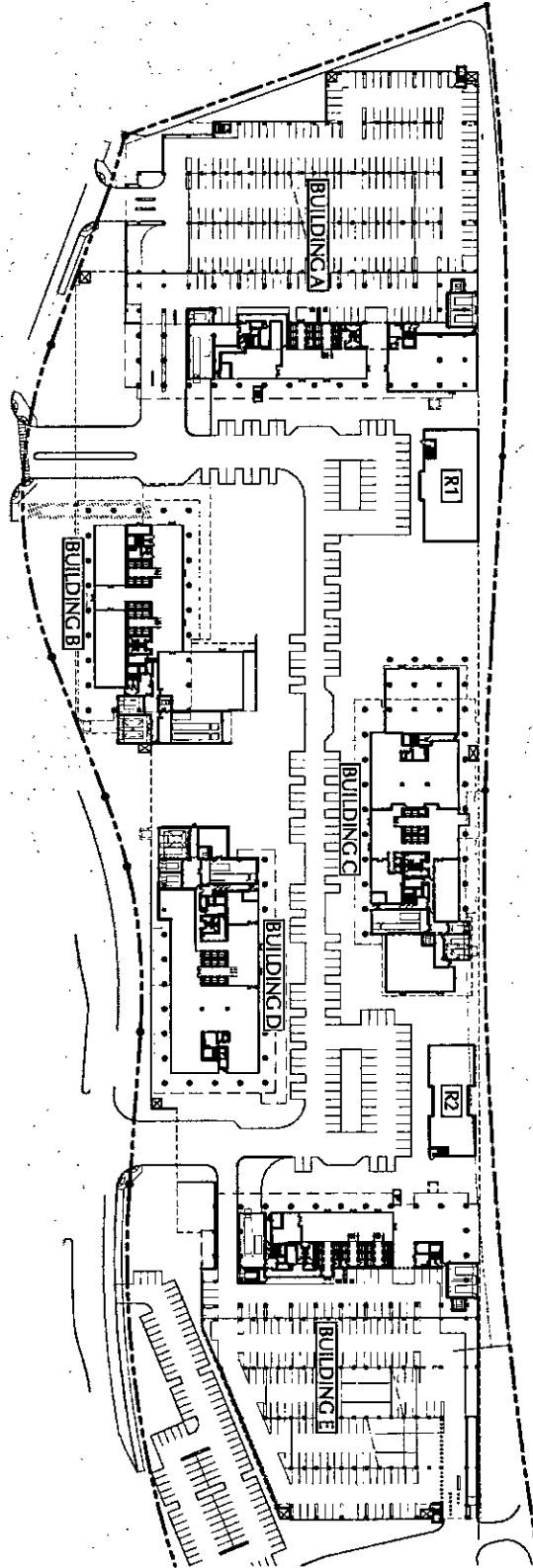
THENCE SOUTH 00 DEGREES 08 MINUTES 02 SECONDS WEST, DEPARTING SAID SOUTHERLY LINE OF SAID FLOOD CONTROL MAINTENANCE EASEMENT AND ALONG SAID WESTERLY RIGHT OF WAY OF

RURAL ROAD, A DISTANCE OF 156.15 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED.

SAID PARCEL CONTAINS 239,500 SQUARE FEET OR 5.498 ACRES, MORE OR LESS.

EXHIBIT B PROJECT SITE PLAN

PROJECT PHASING:
PHASE 1: BELOW GRADE
PHASE 2: BUILDING D
PHASE 3: BUILDING B
PHASE 4: BUILDING C
PHASE 5: BUILDING E AND R1
PHASE 6: BUILDING F AND R2



ARCHITECT
1000 N. GAVIN AVENUE
SUITE 100
TAMPA, FL 33606
TEL: 813.241.1111
WWW.DAVISINC.COM

DEVELOPMENT SITE PLAN

0' 100' 200' 300' 400'

MARINA HEIGHTS
Tampa, AZ

CREATED
DATE: 11/11/10
BY: J. L. LEE
SCALE: 1/8" = 1'-0"

EXHIBIT C

MEMORANDUM OF GROUND LEASE

When recorded return to:

Arizona State University
Attn: Assistant Vice-President,
University Real Estate Development
60 E. Rio Salado Parkway, Suite 513
Tempe, AZ 85281

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE ("Memorandum") is made as of July ____, 2013 (the "Effective Date"), by ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of Arizona State University ("Landlord"), and S/R MARINA HEIGHTS LLC, a Delaware limited liability company ("Tenant").

RECITALS

A. Landlord and Tenant entered into that certain Marina Heights Ground Lease dated _____, 2013 ("Lease"), pursuant to which Landlord leased to Tenant and Tenant leased from Landlord real property, which real property is more particularly described in Exhibit A attached hereto and incorporated herein by this reference ("Demised Premises").

B. Landlord and Tenant desire to execute this Memorandum to provide constructive notice of Tenant's rights under the Lease to all third parties.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Term. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Demised Premises for a term of ninety- nine (99) years commencing on the Effective Date and ending on _____, 2112. Tenant also has an option to extend the term for an additional period of not less than twenty-five (25) years and not more than ninety- nine (99) years on the terms set forth in the Lease.

2. Lease Terms. This Lease of the Demised Premises to Tenant is pursuant to the Lease, which is incorporated in this Memorandum by this reference.

3. Successors and Assigns. This Memorandum and the Lease shall bind and inure to the benefit of the parties and their respective heirs, successors and assigns, subject, however, to the provisions of the Lease on assignment.

4. Governing Law. This Memorandum and the Lease are governed by Arizona law without giving effect to conflicts of law principles.

Executed as of the date first above written.

ARIZONA BOARD OF REGENTS, a body
corporate, for and on behalf of Arizona State
University

By: _____
Steven L. Nielsen, its Assistant Vice President,
University Real Estate Development

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of July, 2013, by Steven L. Nielsen, the Assistant Vice President, University Real Estate Development, on behalf of the Arizona Board of Regents, a body corporate, on behalf of Arizona State University.

Notary Public

My commission expires:

S/R MARINA HEIGHTS LLC,
a Delaware limited liability company

By: _____
John W. Graham, its Authorized Representative

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of July, 2013, by John W. Graham, the Authorized Representative of S/R MARINA HEIGHTS LLC, a Delaware limited liability company, on behalf of the limited liability company.

Notary Public

My commission expires:

EXHIBIT D
IMPROVEMENTS QUITCLAIM DEED

(see attached)

WHEN RECORDED RETURN TO:

Arizona State University
P.O. Box 87-7405
Tempe, AZ 85287-7405
Attn: Maureen Anders, Esq.

QUITCLAIM DEED

This Quitclaim Deed is executed by the undersigned pursuant to that certain Marina Heights Lease dated _____, 2013, between RP HFL LLC, a Delaware limited liability company, as Tenant, and Arizona Board of Regents, a body corporate, for and on behalf of Arizona State University ("ASU"), as Landlord (as heretofore amended and assigned, the "Lease"), the Tenant's interest in which is presently held by the undersigned as to the portion of the Demised Premises (as defined in the Lease) described in Exhibit A attached hereto and incorporated herein by this reference.

For the consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration received, the undersigned does hereby quitclaim to ASU all of the undersigned's right, title and interest, if any, in and to the Improvements (as defined in the Lease) located upon the portion of the Demised Premises described in Exhibit A attached hereto. The Improvements quitclaimed hereunder include, without limitation, those Improvements described in Exhibit B attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, the undersigned has caused this Quitclaim Deed to be executed as of this ____ day of _____, 20__.

_____, a[n] _____

By: _____
Its: _____

STATE OF ARIZONA)
) ss
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, the _____ of _____, a[n] _____, for and on behalf thereof.

Notary Public

My Commission Expires:

**Exhibit A
to
Quitclaim Deed**

(Legal Description – Portion of Demised Premises)

**Exhibit B
to
Quitclaim Deed**

(Description of Quitclaimed Improvements)

EXHIBIT E

DISPUTE RESOLUTION PROVISIONS

1. Arbitration and Mediation of Disputes.

1.1. **Defined Terms.** Defined terms appear in this Exhibit with the first letter of each word in the term capitalized. Unless otherwise expressly defined in this Exhibit, all capitalized terms shall have the same meanings as are attributed to such terms in the Lease of which this Exhibit is a part.

1.2. **Election to Arbitrate.** Either party may elect to resolve by arbitration (following any mediation conducted in accordance with this Exhibit), any dispute between Landlord and Tenant arising from or pertaining to this Lease ("**Dispute**") except as follows:

1.2.1. **Multiple Party Disputes.** If a Dispute (including any potential counterclaims arising out of or relating to the Dispute) involves one or more third parties who (a) are not parties to the Lease and (b) whose joinder in an action would be (i) permissive, pursuant to Rule 20 of the Arizona or Federal Rules of Civil Procedure, or (ii) required, pursuant to Rule 19 of the Arizona or Federal Rules of Civil Procedure, the Dispute shall not be subject to the provisions herein regarding resolution of a Dispute by arbitration and/or mediation at the election of a party. A court of competent jurisdiction, and not an arbitrator, shall resolve any Dispute between the parties regarding whether joinder of a third party is permissive or required for purposes of determining whether a Dispute must be addressed and resolved by mediation and/or arbitration at the election of a party.

1.2.2. **Need for Immediate Judicial Relief.** If any party requires immediate judicial relief to address or resolve an issue, that party may seek and attempt to obtain such immediate judicial relief notwithstanding any election by a party to resolve or address the Dispute by arbitration and/or mediation.

1.2.3. **Other Forms of Relief.** Notwithstanding any election by a party to submit a Dispute to arbitration and/or mediation, the parties reserve any and all rights to address any issues that are or may be in Dispute via any non-judicial procedure they are entitled to utilize as a matter of law or equity, including but not limited to, rights under the Uniform Commercial Code or common law.

1.3. **Determination of Whether a Dispute is Required to be Arbitrated.** A court of competent jurisdiction, and not an arbitrator, shall resolve any Disputes between the parties regarding whether a Dispute must be resolved or addressed by

arbitration or mediation at the election of a party pursuant to the provisions herein.

- 1.4. **Governing Rules.** Any arbitration shall be conducted in accordance with the Commercial Rules of the American Arbitration Association (“AAA”) then in effect except to the extent modified herein.
- 1.5. **Qualification of Mediators and Arbitrators.** Each proposed mediator and arbitrator shall have at least ten (10) years’ experience in commercial real estate matters in Arizona and shall be an attorney licensed to practice law in Arizona. Following receipt of an Arbitration Demand or Mediation Notice, the parties shall endeavor to agree upon mutually acceptable arbitrator(s) or mediator and the terms of a private arbitration and/or mediation in order to avoid the fees and expenses of the AAA. If the parties are unable to agree upon arbitrator(s) or mediator, as applicable, the arbitrator(s) or mediator with the foregoing qualifications, shall be selected pursuant to the practice then employed by the AAA.
- 1.6. **Initiation of Arbitration and/or Mediation Proceedings.** The existence of any Dispute arising from or pertaining to the Lease shall not delay or excuse any performance of a monetary or other obligations of a party under the Lease except as expressly provided in the Lease. If any Dispute shall arise between the parties, then, subject to applicable statutes of limitation, either party, at its election, may initiate arbitration by serving notice to the other party of its intention to arbitrate the Dispute (the “**Arbitration Demand**”), provided either party (the “**Initiating Party**”) may, within five (5) business days of receipt of such Arbitration Demand, as a precursor to arbitration and if practicable under the circumstances, notify the other party of the Initiating Party’s election to submit any Dispute, first, to non-binding mediation (the “**Mediation Notice**”). If the parties are not able to agree upon a mediator within five (5) business days of receipt of a Mediation Notice, either party may submit the Mediation Notice to the AAA and a request for appointment of a mediator in accordance with the procedures then employed by the AAA. Each party may reject the proposed mediator appointed by AAA up to two times by delivering written notice to the other party within two (2) business days following selection of a mediator, but then must accept the mediator appointed by AAA without any further rejection right. Prior to the mediation, the parties shall each provide the mediator with a confidential statement (to be exchanged by the parties, if the mediator’s practice is for the parties to mutually exchange statements) setting forth a description of the nature of the Dispute alleged by the party and, if applicable, the relief sought. The mediation conference shall be conducted and concluded within 60 days of the Mediation Notice and within 30 days of the appointment of a mediator (the “**Mediation Period**”). If the nature of the Dispute requires more immediate attention by a court of competent jurisdiction or an arbitrator, the parties will still endeavor to participate in a mediation, but shall not be required to do so. The mediator’s fees shall be split equally by the parties unless the arbitrator includes such fees in his/her award.

- 1.7. **Arbitration.** If following receipt of an Arbitration Notice, a mediation is not requested by either party, or if requested, is not successful in resolving a Dispute, then the Dispute shall be resolved via arbitration. Unless the parties agree on arbitrator(s) and the terms of private mediation within ten (10) business days following (i) receipt by a party of an Arbitration Demand, if a Mediation Notice is not thereafter given, or (ii) the expiration of the Mediation Period if a Mediation Notice is submitted by either party, then either party may file a copy of the Arbitration Demand with the local office of the AAA together with a copy of the Lease, including this arbitration Exhibit. Within five (5) business days following such filing with AAA, each party shall pay one-half (1/2) of the filing fee as required by the AAA. The parties shall request an arbitrator be appointed as soon as possible in accordance with the selection procedures then employed by the AAA. Any Dispute referred to AAA in accordance with this Exhibit shall be heard by a single arbitrator with the qualifications specified in **Section 1.5** of this Exhibit.
- 1.8. **Discovery.** The arbitrator shall determine whether and to what extent discovery is necessary and appropriate.
- 1.9. **Hearing.** The arbitration hearing must be held as soon as possible and must commence within 30 days following the date on which the arbitrator is appointed, unless the arbitrator for good cause shown delays the hearing to permit discovery or otherwise determines that a fair and just resolution of the Dispute requires that the hearing commence at a later date. At least five (5) days prior to the commencement of the arbitration hearing, each party shall provide the other party and the arbitrator with a statement of its position respecting the Dispute in question, a list of any witnesses whom such party expects to testify at such hearing on its behalf (along with a summary of their anticipated testimony), and a list of exhibits that such party intends to offer at such hearing. The arbitration proceeding shall take place in Maricopa County at a location determined by the arbitrator.
- 1.10. **Scope of Award.** The arbitrator shall have the authority to award any remedy or relief that a state or federal court in Arizona could order or grant. The arbitrator shall have the discretion to award attorneys' fees to the prevailing party in an amount which the arbitrator deems reasonable under the circumstances.
- 1.11. **Fees and Costs.** Each party shall pay its own costs in arbitration. The parties shall share equally the administrative fees imposed by the AAA, if applicable, and the costs of the mediator, if applicable, and the arbitrator; provided, however, all such charges/fees may be awarded by the arbitrator, in his/her discretion, to the prevailing party with arbitration as determined by the arbitrator.
- 1.12. **Appointment of Successor.** If any arbitrator appointed pursuant to this Exhibit shall thereafter die or become unable or unwilling to act, a successor shall be appointed in accordance with parties or, if they are unable to agree within five (5)

business days, by the procedures continuously employed by the AAA in such circumstances.

- 1.13. **Decision Binding.** The decision or award by the arbitrator when made shall be final and non-appealable and the parties shall be bound by such arbitration decision or award for all purposes and judgment may be entered upon it in a court of competent jurisdiction. The arbitrator's award may be enforced as provided for in the Uniform Arbitration Act, A.R.S. §12-1501, *et seq.*, or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held if not Arizona.
- 1.14. **Notices.** All notices and other communications required or permitted hereunder shall be in writing and delivered in accordance with the notice provision of the Lease. Such notices and communications shall be deemed to be given and received pursuant to such provision of the Lease.

[End of Exhibit]